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MEMORANDUM FOR: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan

Summary

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings ("fittings") from Taiwan for the period June 1, 2006, through May 31, 2007. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments and rebuttal comments by parties:

1. Calculation of Revised Cost of Production ("COP")
2. Calculation of Storage Expenses
3. Constructed Export Price ("CEP") Offset
4. Identification of Manufacturer
5. Ta Chen's Raw Material Cost
6. Calculation of CEP Profit Ratio

Background

On July 8, 2008, the Department of Commerce ("the Department") published the preliminary results of this administrative review in the Federal Register. See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 73 FR 38972 (July 8, 2008) ("Preliminary Results"). The period of review ("POR") is June 1, 2006, through May 31, 2007.

This review covers sales of certain fittings made by one manufacturer/exporter, Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen" or "Ta Chen Taiwan"), and its U.S. affiliate, Ta Chen International (CA) Corp. ("TCI"). We invited interested parties to comment on our Preliminary Results. We received case briefs from Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc., (collectively, "Petitioners") on August 7, 2008 ("Petitioners' Brief") and from Ta Chen ("Ta Chen's Brief") on August 8, 2008. We received rebuttal briefs from Petitioners on August 14, 2008 and Ta Chen on August 15, 2008 ("Petitioners' Rebuttal Brief" and "Ta Chen's Rebuttal Brief," respectively). Petitioners requested a public hearing, which was conducted on August 19, 2008.

Discussion of the Issues

Comment 1: Calculation of Revised Cost of Production ("COP")

Petitioners contend that the Department's preliminary margin calculation should be amended to correct a ministerial error so that Ta Chen's COP is calculated as: TOTCOP = TCOMCP + GNACP + INTEXCP.

Specifically, Petitioners state that in the Department's margin calculations for the Preliminary Results, the Department revised the calculation of Ta Chen's general and administrative ("GNA") expenses and interest expenses, redefined as variables GNACP and INTEXCP in its SAS calculations. See Memorandum to the File, "Analysis Memorandum for the Preliminary Results of Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Ta Chen Stainless Pipe Co., Ltd.," dated June 30, 2008 ("Preliminary Sales Analysis Memo"), at Attachment 5, log lines 2100, 2101, 2116 and 2117. Petitioners assert that the Department did not use the revised element names of its total cost of production ("TOTCOP") variable. Petitioners insist that the Department should revise its calculation of TOTCOP, as TOTCOP = TCOMCP + GNACP + INTEXCP.

Respondent Ta Chen did not comment on this issue.

Department's Position:

We agree with Petitioners and have made the necessary changes to calculate Ta Chen's TOTCOP using the revised GNA and interest variables as intended. It is clear from our Preliminary Sales Analysis Memo (at 2-3 and 13-14) that we intended to use the revised GNA and interest expenses in our calculation of Ta Chen's total COP. For the changes made to Ta Chen's TOTCOP, see Sales Analysis Memorandum for the Final Results of Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Ta Chen Stainless Pipe Co., Ltd., dated January 5, 2009 ("Final Sales Analysis Memo").

Comment 2: Calculation of Storage Expenses

Petitioners argue that during its U.S. verification of TCI, the Department found that Ta

Chen had "indent" sales to a U.S. customer requiring separate inventory storage by TCI. Petitioners contend that although separate inventory storage by TCI for this U.S. customer is stated in the contractual language between TCI and the U.S. customer, the storage expenses for this customer were not previously reported by TCI in its U.S. sales database. See Verification of the Sales Responses of Ta Chen International, United States Affiliate of Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen") in the Antidumping Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan, dated June 10, 2008 ("TCI Verification Report") at 9. Petitioners note that Ta Chen's questionnaire responses indicate that "indent" sales are sales from Ta Chen that are shipped directly to TCI's U.S. customers without storage or inventory by TCI. Petitioners contend that the Department found evidence at verification that TCI provided storage for merchandise sold to this customer, and that Ta Chen's explanations regarding this evidence are post hoc and have no merit. Based on the findings at TCI's verification, Petitioners argue that the provision of storage services contradicts Ta Chen's definition of "indent" sales. Therefore, Petitioners argue that the Department should apply, as partial adverse facts available, the single highest value reported from the U.S. inventory carrying cost ("INVCARU") field to all sales to that customer during the POR.

Contrary to Petitioners' assertion that separate storage expenses were incurred by TCI for U.S. sales to a particular customer based on language in its purchase order (see Petitioners' June 18, 2008, letter at 2), Ta Chen asserts in that during verification TCI explained that such contractual language does not relate to subject merchandise, but to non-subject merchandise (i.e., welded pipe). See TCI Verification Report at 9. In addition, Ta Chen states that it provided e-mails from that particular customer confirming this fact and, thus, Petitioners' argument is without adequate factual basis and should be rejected. See Ta Chen's Brief at 48.

In rebuttal, Petitioners take issue with the explanations provided by TCI, stating that the e-mails provided by TCI at verification were not generated during the normal course of business. Rather, Petitioners assert that the e-mails were in response to TCI's queries to the customer. See Petitioners' Rebuttal Brief at 33-34. Petitioners state that TCI attempted to lead its client in a post-hoc rationalization in order to override information contained in the sales documentation, and that the Department should reject the explanations. Id. at 34.

In rebuttal, Ta Chen reiterates as explained at verification the language contained in the sales documentation did not relate to merchandise subject to this review. Ta Chen explains that the customer's e-mails regarding this issue, taken by the Department, indicate that the language in question applied only to welded pipe, and was erroneously included on a purchase order for fittings. Ta Chen states that the customer in question is one of hundreds during the instant POR. See Ta Chen's Rebuttal Brief at 52-53. Therefore, Ta Chen argues that partial adverse facts available are not warranted for TCI's storage costs.

Department's Position:

Ta Chen's questionnaire responses state that merchandise sold pursuant to "indent" sales is shipped directly to the customer from Ta Chen without storage or inventory by TCI. See Ta

Chen's September 11, 2007, response at 17. At verification, the Department examined other indent sales to other customers and found no evidence to indicate that TCI incurred storage expenses associated with indent sales to other customers. See, e.g., TCI Verification Report at Verification Exhibits ("VE-") 28, VE-30, and VE-32. As for the sale to the customer in question, at verification we requested that Ta Chen provide an explanation for the language in one purchase order for one sale. The language in the purchase order indicated that, per instructions in a particular letter, Ta Chen was to provide separate storage for merchandise sold to the customer making the purchase. Ta Chen indicated that it did not have the letter in question, and contacted the customer during verification regarding our question. The e-mail discussions between Ta Chen and the U.S. customer are included in TCI Verification Report VE-9. See TCI Verification Report at page 9. The e-mail from the customer indicated that the agreement regarding storage was for non-subject merchandise. The Department found no other evidence that TCI provided storage for indent sales to the customer in question. Therefore, for these final results, we find that we have insufficient evidence to conclude that TCI provided storage for sales to the customer in question, and we have not adjusted those sales for storage costs as suggested by Petitioners.

Comment 3: Constructed Export Price ("CEP") Offset

Petitioners argue that the Department should reverse its finding in the Preliminary Results that Ta Chen's home market level of trade (or normal value ("NV") level of trade) is at a more advanced level than its sales to TCI in the U.S. market. Petitioners argue that the Department should deny Ta Chen a CEP offset in the final results.

Petitioners provide their own level of trade analysis to demonstrate their assertion that Ta Chen's home market level of trade is less advanced than its U.S. market level of trade, i.e., CEP level of trade. Specifically, Petitioners address the following seven points: 1) Ta Chen's selling function claims; 2) Ta Chen's home market selling functions; 3) Ta Chen's CEP selling expenses; 4) Ta Chen's CEP offset argument; 5) the Department's verifications of Ta Chen and TCI; 6) analysis of the Department's four major selling function categories; and 7) a summary of the Department's 1999-2000 antidumping duty administrative review of this order. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review, 66 FR 65899 (December 21, 2001) ("1999-2000 Review"). Further, Petitioners request that if the Department continues to find that Ta Chen's home market selling functions constitute a higher level of trade ("LOT") than its U.S. market selling functions, and therefore, grant a CEP offset to Ta Chen in the final results, the Department should explain its reasoning in detail, with specific emphasis on the Department's finding regarding the freight and delivery selling function category.

Each of Petitioners' points is discussed in greater detail below.

Ta Chen's Selling Function Claims

Petitioners state that Ta Chen's affirmative claims and defense of its selling functions in

the home and U.S. markets rely on critical fallacies. Therefore, Petitioners request that the Department re-evaluate Ta Chen's classification of its selling functions based upon the record evidence.

First, Petitioners argue that Ta Chen unjustifiably classifies similar commercial activities in the home market (i.e., sales in Taiwan) as selling functions, but only as administrative functions when supporting the sale to TCI in the United States. Petitioners cite Ta Chen's June 20, 2008, letter at 9 and footnote 14, in which Ta Chen states that TCI handles all sales efforts to U.S. customers, and insists that Ta Chen has not provided sufficient support of its classification claims. Petitioners contend that if Ta Chen is allowed to characterize its selling functions as "not applicable," "low," "medium," or "high" without proper evidence supporting its rankings, then a CEP offset essentially becomes an automatic adjustment. Petitioners state that automaticity of the CEP offset has been rejected by the Department, and the Department has been upheld in this view by the U.S. Court of Appeals for the Federal Circuit (citing Micron Technology, Inc. v. United States, 243 F.3d 1301, 1307-08 (Fed. Cir. 2001)). See Petitioners' Brief at 6-7.

Second, Petitioners state that Ta Chen incorrectly excludes from consideration all selling functions undertaken by Ta Chen for "indent" CEP sales to TCI, i.e., sales that TCI does not make from its U.S. inventory but instead are shipped directly to the U.S. customer by Ta Chen. Petitioners contend that Ta Chen is effectively alleging that there are two CEP levels of trade based on two channels of trade (i.e., "indent" and "non-indent" sales). Petitioners state that although Ta Chen reports that the CEP sales are executed by TCI, Ta Chen still incorrectly dismisses from consideration all the selling functions that Ta Chen must perform in order to enable TCI to offer and make CEP "indent" sales. See Petitioners' Brief at 7-8.

Third, Petitioners argue that Ta Chen's claims regarding its selling functions incorrectly rely on its attempt to decouple selling functions from selling expenses while simultaneously inventing new selling functions solely for home market sales. Petitioners continue that for home market sales Ta Chen cannot reasonably argue that it had substantial activities reflected in any commercial expenses for home market freight and delivery. Petitioners note that Ta Chen stated that it incurs a small amount of inland freight for only a "small fraction" of total home market sales in its June 20, 2008, letter. Petitioners therefore contend that Ta Chen incurs significantly more selling expenses related to U.S. selling activities, because both the range and number of selling activities within Ta Chen are greater on a more complicated export sale than on a home market sale in Taiwan.

Fourth, Petitioners disagree with Ta Chen's proposal that the selling activities and effort reflected in Ta Chen's home market indirect selling expenses be recognized for home market sales (as INDIRSH) but ignored for support of CEP sales (as DINDIRSU) (citing Ta Chen's June 20, 2008, letter at 7-9). Petitioners argue that Ta Chen's proposal self-servingly does not object to the same pool of expenses and related activities reported as INDIRSH (the home market equivalent of DINDIRSU) from being considered for the home market LOT and CEP offset analysis. Petitioners urge the Department to reject Ta Chen's attempt to classify the same set of expenses depending solely on whether it benefits Ta Chen's selling function analysis. See

Petitioners' Brief at 11-12.

Ta Chen's Home Market Selling Functions

Petitioners argue that of all of the selling function fields claimed by Ta Chen for its home market sales, only 60 percent are applicable and only 50 percent of the total were active. Petitioners aver that Ta Chen's claimed home market expenses (i.e., interest revenue ("INTREVH"), home market indirect selling expenses ("INDIRSH"), inland freight expenses ("INLFTCH"), GNA, factory overhead ("FOH"), and home market packing ("PACKH")) are not indicative of all selling activities that should be reflected in those expenses.

Ta Chen's United States Selling Expenses in the Home Market

Petitioners argue that Ta Chen understates its U.S. selling expenses when it names only domestic indirect selling expenses ("DINDIRSU"), domestic inland freight ("DINLFTPU"), domestic brokerage ("DBROK2U"), marine insurance ("MARNINU") and export duty ("EXPDTU") fields as pertinent to its LOT analysis (citing Ta Chen's January 28, 2008, Supplemental Questionnaire Response ("Ta Chen's First SQR" at Exhibit Supp. 6). Petitioners insist that with exception of warranty expenses ("WARRU"), commissions ("COMMU"), credit expenses ("CREDITU"), INDIRSU, INVCARU and inland freight expenses ("INLFTWCU"), all other selling functions and their expense fields should be compared to home market selling functions.

Petitioners provide a chart of Ta Chen's U.S. market selling functions, evidenced by expense fields, that they believe should be considered in the Department's final CEP offset analysis. Petitioners include the weighted-average costs in new Taiwanese dollar ("NTD") for each expense they identify as a selling function to support Ta Chen's sale to TCI, along with a subtotal of those functions. See Petitioners' Brief at 14. In its chart, Petitioners identify selling activities associated with home market direct and indirect sales processes, marketing, freight and delivery, Taiwan inventory maintenance, Taiwanese bank processing, Taiwan packing and containerizing functions they contend should be compared to the home market selling functions. In addition, Petitioners stress that U.S. duty expenses ("USDUTY"), U.S. brokerage and handling expenses ("USBROKU"), and inland freight from the Taiwan factory to the Taiwanese port ("INLFPWU") all support Ta Chen's sale to TCI as a U.S. selling function. Therefore, Petitioners include these three expenses in their chart and provide a second subtotal figure. Petitioners then provide a grand total of the expenses they determine are related to Ta Chen's selling functions on transfer sales to TCI. See Petitioners' Brief at 13-15.

Petitioners note that under 19 C.F.R. § 351.402(b) the enumerated expenses are still considered U.S. expenses, irrespective of where or by whom they are paid, as long as they reflect U.S. commercial activities. Petitioners add that conversely, any CEP expense deducted under 19 C.F.R. § 351.402(a) and consequently required to support the transfer of subject merchandise from Taiwan to TCI is properly considered as an expense made on the sale to TCI, even if TCI made the payment on its parent company's behalf as it did for international freight. See

Petitioners' Brief at 15 (citing Ta Chen's Section C Questionnaire Response, dated September 24, 2007 ("Ta Chen's CQR") at C-26).

Ta Chen's CEP Offset Argument

Petitioners state that when the facts are addressed, Ta Chen's analytical framework demonstrates that a CEP offset is not warranted. Petitioners argue that its own CEP analysis finds that more selling expenses at a more advanced stage exist for Ta Chen's CEP sales than for its home market sales.

Petitioners contend that their analysis of Ta Chen's actual expenses incurred with selling functions, as actually reported, provide a more objective, complete, and accurate measure of relative selling functions, both qualitatively and quantitatively, than the subjective, incomplete, and inaccurate nominal "low," "medium," and "high" designations provide by Ta Chen. As discussed below, Petitioners provide analyses of 13 Ta Chen selling functions they believe differ in terms of "not applicable," "low," "medium," or "high" rankings from Ta Chen's classification, and that they believe are unsupported by record evidence in this review.

Customer Contact

Petitioners argue that Ta Chen's customer contact selling functions should be identified as "medium" in both markets, rather than "medium" for home market sales and "not applicable" for the transfer sale to TCI as reported by Ta Chen. Petitioners point out that TCI staff places orders with Ta Chen. Thus, Petitioners aver that the processing time for establishing the transfer price and entry value of those purchase orders and the *pro-forma* invoicing on the transfer price sale cannot be dismissed as not applicable, because the focus is on the transaction from Ta Chen to TCI.

Order Acceptance

Petitioners argue that Ta Chen's sales processing work per person for the home market LOT should be considered "low" for the home market and "high" for the U.S. market, rather than "medium" for the home market and "low" for U.S. sales, as identified by Ta Chen. In support of this argument, Petitioners state that the processing time for home market purchase orders and for transfer price sales are not different, and that Ta Chen has failed to explain or produce evidence that they, in fact, differ. In addition, Petitioners note that Ta Chen's staff processed substantially fewer U.S. sales during the POR. Petitioners also note that the number of employees handling Taiwanese sales is far less than the number of employees handling U.S. sales.

Freight and Delivery Arrangements

Petitioners argue that Ta Chen's classifications of freight and delivery selling effort as "high" in the home market, and "low" in the U.S. market are unsupported by the evidence on the

record. Petitioners state that the magnitude of U.S. expenses is significantly greater than that of home market sales, when indirect selling expenses are included in the analysis. Petitioners specifically point out that Ta Chen had more sales to the United States, which required a greater sales effort for INLFTCH, U.S. inland freight expenses ("INLFTPU"), international freight expenses ("INTNFRU"), MARNINU, domestic brokerage and handling expenses ("DBROKU"), EXPDTU, USDUTY, USBROKU, and INLFPWU expenses than for home market sales. Moreover, Petitioners aver that Ta Chen had far fewer sales to its home market customers in which it delivered fittings rather than having its customers pick up the fittings, therefore, reducing the freight and delivery arrangement effort required by Ta Chen for its home market sales. In sum, Petitioners contend that the Department should consider the level of freight and delivery selling functions as "high" for the transfer sale from Ta Chen to TCI, and "low" or "not Applicable" for home market sales. See Petitioners' Brief at 21-26.

Inventory Maintenance

Because Ta Chen's shipments to TCI are taken from the inventory maintained by Ta Chen in Taiwan, Petitioners state that Ta Chen's inventory maintenance function should be ranked as "medium" for the average inventory period and resulting average cost for the transfer sale from Ta Chen to TCI, rather than "not-applicable" as identified by Ta Chen. In addition, Petitioners note that Ta Chen has stated that most of its sales to TCI are made-to-order based upon its production schedule, and on rare occasions are sold from Ta Chen's factory inventory in Taiwan. See Petitioners' Brief at 26-27.

Risk of Non-Payment

Petitioners argue that Ta Chen's classification of the risk of non-payment in the home market as "high" is misplaced. Petitioners assert that the proper classification of the non-payment risk in the home market should be "medium." See Petitioners' Brief at 27-28.

Customer Complaints

Petitioners find that Ta Chen's indication that the effort for fielding customer complaints in the home market for domestic sales was "low," while the effort for Ta Chen's sales to TCI was "not applicable" to be incorrect and unsupported. Petitioners state that due to the presence of returns for Ta Chen's U.S. sales and the absence of returns for Ta Chen's home market sales, the level of effort Ta Chen expended for addressing customer complaints should be "medium" for U.S. sales and "low" or "not-applicable" for home market sales. Petitioners support their argument by stating that Ta Chen provides no evidence of complaints in the home market. Because Ta Chen reports U.S. freight return expenses ("FRTRETU"), Petitioners infer that TCI would need to correspond with Ta Chen, hence increasing the effort Ta Chen expends to address customer complaints for CEP sales. See Petitioners' Brief at 28. In addition, Petitioners note that the Department found at verification that for returns involving U.S. sales (whether the fittings are sent to Tainan, Taiwan or not), Ta Chen acknowledged that it is TCI that contacts Ta Chen to pursue such issues, not TCI's customers. See Petitioners' Brief at 30.

Payment Processing

Petitioners state that Ta Chen's level of effort for payment processing for U.S. sales should be identified as "low" for sales from Ta Chen to TCI, and "not-applicable" for home market sales. Petitioners claim that Ta Chen's classification of its payment processing selling effort for home market as "high," and the effort for U.S. sales as "not-applicable" ignores the fact that Ta Chen must process payment from TCI for its transfer price sales. Petitioners argue that Ta Chen must trace and record payments in accounts receivable and its bank deposits, both for the monies transferred from TCI for CEP sales and its home market sales, therefore necessitating a level of payment processing effort for U.S. sales. See Petitioners' Brief at 30-31.

Market Research

Petitioners argue that Ta Chen's claim that its market research effort in the home market for domestic sales was "high" while that for Ta Chen's sales to TCI was "not-applicable" is extremely unlikely. Petitioners state that Ta Chen has indicated that its indirect selling expenses reflect market need projections. Therefore, Petitioners contend that the Department should consider a comparison of Ta Chen's INDIRSH for home market sales and DINDIRSU for sales to TCI, and find that market research selling functions are "medium" in both markets. See Petitioners' Brief at 31.

Research and Development

Petitioners disagree with Ta Chen's claims that research and development ("R&D") in the home market for domestic sales was "high" while that for Ta Chen's sales to TCI was "not-applicable." However, because Ta Chen reported that it incurred no R&D expenses during the POR, Petitioners request that this selling function category be considered "not-applicable" for both home market sales and sales from Ta Chen to TCI. See Petitioners' Brief at 31-32.

Technical Assistance

Petitioners argue that Ta Chen's technical assistance selling function category should be "not-applicable" for both home market sales and sales from Ta Chen to TCI, as opposed to "high" for the home market, and "not-applicable" for sales from Ta Chen to TCI, as claimed by Ta Chen. Petitioners claim that Ta Chen neither reports direct selling expenses for technical assistance nor has it shown how technical services are provided to support any sales. In addition, Petitioners note that Ta Chen stated in a supplemental questionnaire response that it did not incur any travel expenses during the POR for technical assistance to customers. See Petitioners' Brief at 32-35. Petitioners argue that since Ta Chen did not travel to provide technical assistance to customers, any general advice provided by Ta Chen would have been by phone or e-mail, and that general advice is not technical assistance.

Petitioners note that when the Department queried Ta Chen to document the source of its technical assistance functions, Ta Chen pointed to its FOH expense. However, Petitioners contend that technical service expenses related to actual technical assistance would be direct selling expenses (e.g., TECHSERH) when undertaken by unrelated technicians or would be line-items in the build-up of Ta Chen Taiwan's indirect selling expenses. Therefore, Petitioners state that Ta Chen failed to show how or why its claimed activities were placed into FOH to account for technical assistance. See Petitioners' Brief at 33-35.

Packing and Loading

Petitioners state that Ta Chen's packing and loading selling function effort should be considered "medium" for home market sales, and "high" for its sales to TCI. Petitioners argue that the packing and loading activities Ta Chen performs for sales to TCI far exceed those for the home market sales in complexity and cost. Petitioners note that Ta Chen reported that it does not package fittings for home market sales but, rather, will load the fittings onto the customer's truck. Petitioners argue that such loading does not constitute packaging of the merchandise. See Petitioner's Brief at 35-36. Petitioners state that the true packing cost should be zero for Ta Chen's home market packing expenses.

In addition, Petitioners argue that according to Ta Chen's Section B Questionnaire Response dated September 24, 2007 ("Ta Chen's BQR") and CQR at Exhibit B-7, and C-49 and Exhibit C-9, respectively, Ta Chen's costs associated with its laborers loading fittings on a customer's truck appear to be significantly overstated.

After-Sales Service

Petitioners argue that Ta Chen's claim that the after-sales service function in the home market for domestic sales was "low" while for Ta Chen's sales to TCI it was "not-applicable," ignores the support functions on the transfer sales (e.g., purchase orders, pro-forma invoices, shipment processes, inventory management, etc.) that are required for the sale from Ta Chen to TCI. Petitioners contend that the proper relative measure of Ta Chen's after-sale service for home market sales and sales to TCI would be INDIRSH versus DINDIRSU.

Travel and Entertainment

Petitioners state that in the context of all reported expenses, Ta Chen's company travel and entertainment functions effort should be "medium" in both the home and U.S. markets. Petitioners argue that Ta Chen's unsupported and late claim that "little traveling and entertainment in support of sales to TCI are not for fittings" is without merit and should be dismissed. See Petitioners' Brief at 37. Petitioners contend that the indirect selling expenses for Ta Chen to maintain good corporate relationships with its affiliated distributor and customer TCI should inherently include inter-company travel and expenses for Ta Chen executives, sales staff, and technicians. Petitioners also state that the Department found at verification that travel functions also include market research, general oversight, and inter-company staff transfers

between parent and subsidiary.

In sum, Petitioners provide a chart of Ta Chen's selling functions and the level of effort they contend Ta Chen affected for each selling function for sales in the home market and to TCI. See Petitioners' Brief at 38. Based upon the totality of the evidence and as demonstrated by their analysis above, Petitioners claim that Ta Chen performs a greater amount of selling functions to support its transfer sales to TCI than its sales to home market customers.

The Department's Verifications

Petitioners state that the Department's verification of Ta Chen in the home market, with regard to the execution of selling functions, support the finding that Ta Chen has significantly more sales functions, which require greater selling effort for U.S. sales than for home market sales. Petitioners specifically identify differences among Ta Chen's reported level of selling effort and their own analysis for travel, market research, technical assistance, customer contact, and addressing customer complaints selling functions.

In addition, Petitioners argue that although Ta Chen officials at the Taiwan verification provided limited information as to the sale between TCI and its customers to the verifiers in Taiwan, the Department obtained more explanation and documentation from the home market verification for the U.S. selling expenses establishing TCI cost ("TCICOSTU") and its relationship to the gross unit price ("GRUPRWU"); MARNINU and bank charge ("BANKCHR1"), bills of lading, pro-forma invoicing, INTNFRU, use of foreign exchange memos, DBROKU, DINLFTPU and multiple documents and calculations to establish DBROK2U, PACK1U, and PACK2U; EXPDTU; calculations to establish DINDIRSU and DINVCARU; and customs declarations, all of which illustrate the considerable degree of selling support for "TCI as the buyer and Ta Chen as the seller." See Verification of the Questionnaire Responses of Ta Chen Stainless Pipe Co., Ltd. in the Antidumping Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan ("Ta Chen Verification Report"), dated June 10, 2008 at 50-54. In addition, Petitioners note that the Department confirmed that Ta Chen is "responsible for arranging the shipment of the product, the ocean voyage carrier, and the customs clearance documentation," even if it is TCI that records payment. See Petitioners' Brief at 41. Therefore, Petitioners contend that the selling functions of Ta Chen Taiwan to TCI are far greater and more advanced in terms of market stage than those on home market sales, and not vice-versa as claimed by Ta Chen.

Verification of TCI

Petitioners note that during the Department's verification of TCI, company officials indicated that they could not provide "specific information supporting the characterization of many of the activities" reported as "low," "medium," or "high." See TCI Verification Report at 10. Petitioners state that Department verifiers therefore queried company officials for the rationale used to designate levels for each particular selling function, and that upon such item-by-item review, company officials merely "characterized Ta Chen and TCI's selling functions at

the same level." See Petitioners' Brief at 41. Petitioners argue that the inability of TCI officials to provide any objective measures for their characterizations supports Petitioners' "quantitative" analysis explained above. Specifically, Petitioners state that Ta Chen's customer contact, order acceptance, inventory management, customer complaints, market research, after-sale support, travel and entertainment selling functions were at a "medium" level for home market sales and for sales by Ta Chen to TCI.

In addition, Petitioners argue that their analysis indicates that freight and delivery, and packing and loading functions were actually greater as support functions for the sales by Ta Chen to TCI than for Ta Chen's home market sales. Lastly, Petitioners add that in the Department's review of packing and loading designations, TCI officials admitted that the designations were clearly wrong, so that packing and loading should have been characterized as "high" for Ta Chen's efforts on U.S. indent sales and "not-applicable" for TCI's effort on such sales. Petitioners aver this further supports their analysis of Ta Chen's proper selling function levels.

Analysis of the Department's Four Major Selling Function Categories

Petitioners provide two charts based upon their analysis of Ta Chen's selling functions. Both of Petitioners' charts segregate Ta Chen's selling functions into the four categories noted in the Department's Preliminary Results, i.e., (1) sales process and marketing support, (2) freight and delivery, (3) inventory maintenance and warehousing, and (4) warranty and technical services. The first chart illustrates Petitioners' quantitative analysis of each of the expenses within the individual categories. Petitioners' second chart assigns a score of either zero (or "N/A"), one (low), two (medium), and three (high) to measure the level of effort that Petitioners believe Ta Chen undertook during the POR for its home and U.S. market sales. See Petitioners' Brief at 43 and 44. Petitioners note that their charts and analyses are based upon costs incurred and reported by Ta Chen and/or TCI. Therefore, selling functions that Ta Chen may be responsible for, but did not actually incur during the POR have been excluded from Petitioners' charts. Based upon its charts and analyses of Ta Chen's selling functions, Petitioners contend that: 1) Ta Chen's home market selling and marketing functions are virtually identical to those for U.S. sales; 2) Ta Chen's freight and delivery selling activities for Ta Chen's sales to TCI were greater than those for home market sales during the POR; 3) Ta Chen's inventory carrying costs for shipments to TCI were greater than those on home market sales and should be classified as a "medium" level of sales effort; 4) Ta Chen has not provided any record evidence supporting its claims of warranty and technical services selling efforts; and lastly, 5) the evidence on the record does not support a finding that Ta Chen's home market selling functions were at a more advanced stage of distribution than the sales made to TCI. See Petitioners' Brief at 44-47.

The Department's 1999-2000 Review of this Proceeding

Lastly, Petitioners note that in the instant proceeding, the Department preliminarily granted a CEP offset to Ta Chen. For the final results of this review, Petitioners urge the Department to consider their analysis of Ta Chen's selling functions and deny a CEP offset to Ta

Chen. Petitioners cite the Department's 1999-2000 Review of this case, in which the Department found that Ta Chen did not have greater selling functions for its sales in the home market than for its sales to TCI. Petitioners add that in the 1999-2000 Review, the Department found that Ta Chen had not carried its burden of proof and consequently was not entitled to a CEP offset with respect to the four selling function groups. See Petitioners' Brief at 47-49.

Petitioners note that in prior segments their arguments regarding Ta Chen's entitlement to a CEP offset have been rejected by the Department on the presumption that Petitioners had "not cited to any new fact." Petitioners state that in the current review they have highlighted and quantified the evidence on the record in ways that put Ta Chen's data in new perspectives.

Furthermore, Petitioners state that in the past the Department has examined relative quantities sold per market as part of its CEP-offset analysis. Petitioners disagree with this analysis because: 1) relative quantities sold provide the basis, not for a CEP-offset adjustment, but for a difference-in-quantity adjustment under section 19 U.S.C. § 1677b(a)(6)(C)(i); and 2) they have demonstrated that the intensity of Ta Chen's sales in terms of the number of transactions per salesperson was significantly greater for Ta Chen's sales to TCI than for Ta Chen's home market sales.

In rebuttal, Ta Chen contends that its sales to home market customers are at a more advanced LOT than sales to TCI in the United States. In support of its contention, Ta Chen asserts that: 1) the Department should ignore selling activities associated with the DINDIRSU expense field; 2) Petitioners' arguments are erroneously fixated on expense fields and expense amounts, rather than the selling activities themselves; and 3) information on the record adequately supports its claimed selling activities and their intensities. Ta Chen undertakes a review of each claimed selling activity, in rebuttal to Petitioners' approach, in support of its final assertion.

Ta Chen's arguments are detailed below.

Selling Activities in DINDIRSU Field

Ta Chen states that any consideration of the selling activities corresponding to the DINDIRSU field would be "without any factual or legal merit." Ta Chen explains that it has two types of sales in the United States, which are sales from stock located in TCI's warehouses in the United States and indent sales. Indent sales, according to Ta Chen, are sales where TCI requests that Ta Chen "ship the fitting from Ta Chen's facility in Tainan, Taiwan directly to the unaffiliated U.S. customer." Ta Chen argues that the activities represented by the expenses captured in the DINDIRSU field "are performed for U.S. indent sales that constitute a small portion of the total U.S. sales and, thus, are irrelevant to a LOT analysis under the statute involving CEP." As for stock sales, Ta Chen states that it "performs no selling activities in support of those sales." Therefore, Ta Chen argues that it incurs only a small level of expenses in Taiwan associated with selling functions for U.S. sales. See Ta Chen's rebuttal brief at 3-4.

In support of its arguments concerning stock sales, Ta Chen cites to the Department's verification reports for both Ta Chen and TCI. Specifically, Ta Chen states that the Ta Chen Verification Report indicated that no special planning is required by Ta Chen Taiwan to meet the needs of TCI. Ta Chen also states that the report indicates that because TCI is responsible for the sale of stock product to its customers, Ta Chen provided little information to the verifiers as to the sales between TCI and its customers. More specifically, Ta Chen cites the Ta Chen Verification Report in which it reports that "Ta Chen Taiwan monitors TCI's inventory . . . {and} will generally determine what merchandise will be sold to TCI . . . . Ta Chen Taiwan will make stock sale transactions to TCI without TCI's request or consent." Furthermore, Ta Chen states that the TCI Verification Report indicates that TCI performed most of the selling activities for the U.S. sales, regardless of whether they were indent or stock sales. Id. at 5-6.

With respect to the sales activities performed by Ta Chen for sales to TCI, Ta Chen states that its questionnaire responses classify such activities as more administrative than selling. Ta Chen provides the processing of invoices as an example, stating that this is a clerical process. Therefore, Ta Chen argues that "any activities that Ta Chen Taiwan performs for U.S. stock sales should not be considered in the Department's LOT analysis." Ta Chen believes that there is an adequate legal basis to ignore administrative activities, such as the clerical processing of invoices, in a LOT analysis. Id. at 6.

In support of its arguments concerning indent sales, Ta Chen argues that the statute requires the Department to ignore Ta Chen's selling activities performed for such sales. More specifically, Ta Chen believes that the statute requires the Department to base the CEP LOT on the starting price for sales made by a U.S. affiliate after deducting expenses under 19 U.S.C. § 1677a(d) ("subsection (d)"). Ta Chen argues that the statute defines the selling expenses to be deducted as "any . . . expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise . . ." Id. at 8. Ta Chen further states that the statute is silent on whether the expenses must be incurred in the United States or not, therefore imposing no geographic condition on the selling expenses to be deducted. Ta Chen cites decisions by both the Department and the Court of International Trade ("CIT" or "Court") to support its position.[1] Id. at 8-9.

Additionally, Ta Chen argues that the Department should ignore selling activities provided by Ta Chen Taiwan for the first unaffiliated U.S. customer. Ta Chen states that these activities are covered by subsection (d) and bear a direct relationship to the sale. Ta Chen lists the activities that Petitioners argue are covered in the DINDIRSU field as customer contact, order acceptance, customer complaints, market research, after-sales service, and travel and entertainment. Rather than being covered in the DINDIRSU field, as claimed by Petitioners, Ta Chen states that some of these activities are administrative and not selling, and others are the responsibility of TCI. Ta Chen also claims that these activities were excluded by the Department in its analysis of selling functions for a previous review, with the exception of order acceptance. Id. at 11. Therefore, Ta Chen asserts the Department should be consistent with its past practice.

[1] See Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 65 FR 30068 (May 10, 2000) and Mitsubishi Heavy Indus., Ltd. v. United States, 15 F. Supp. 2d 807 (CIT 1998).

Finally, with respect to the DINDIRSU field, Ta Chen argues that Petitioners have failed to support their contention that the Department should consider Ta Chen's home market selling activities for U.S. indent sales. Ta Chen states that Petitioners' claim with respect to supposed changes in the Department's practice on selling functions fails to cite any legal authority for the change. Additionally, Ta Chen states that the Department ignored the selling activities performed by Ta Chen for indent sales in the most recently completed administrative review in June 2008.

Selling Activities vs. Expense Fields

Ta Chen argues that Petitioners' characterization of selling functions performed by Ta Chen is misplaced due to Petitioners' focus on expense fields rather than selling activities. Citing to 19 U.S.C. § 1677b(a)(7)(A) and 19 C.F.R. § 351.412(c)(2), Ta Chen states that both the law and the Department's regulations clearly indicate that the focus of any LOT analysis is on selling activities, and not expenses or expense fields. With respect to Petitioners' arguments on the use of expense fields, Ta Chen points out that expenses related to a selling activity may be accounted for in different expenses fields. Therefore, according to Ta Chen, expense fields may not accurately represent or identify selling activities. Id. at 15. Ta Chen further states that "the distortive effect of Petitioners' approach is obvious: by focusing on expense fields rather than selling activities, Petitioners conveniently understate the amount of selling activities performed for the NV LOT and overstate the amount of such activities performed for the CEP LOT." Id. at 16. Ta Chen states that Petitioners failed to cite to any legal authority or factual circumstance to justify reliance on expense fields or expense amounts rather than on the number and intensity of selling activities.

Record Information Related to Selling Functions

Ta Chen argues that Petitioners distort Ta Chen's selling activities. Ta Chen undertakes an examination of each of the reported selling activities, similar to the analysis undertaken by Petitioners. Each of these is detailed below.

Customer Contact

Ta Chen contends that Petitioners fail to consider record evidence (including the Ta Chen Verification Report) confirming that hardly any coordination and virtually no communication is required between Ta Chen Taiwan and TCI with respect to its transfer sales. See Ta Chen's Rebuttal Brief at 18-19, quoting the Ta Chen Verification Report at 20-21.[2] Ta Chen states that these facts are unsurprising given that TCI is a wholly-owned sales subsidiary of Ta Chen Taiwan. Ta Chen avers that Petitioners take issue with this explanation, stating that it "ignore{s} the basic monitoring of TCI's inventory by Ta Chen Taiwan." Contrary to Petitioners'

[2] Ta Chen reiterates that no "special planning is required {for Ta Chen Taiwan} to meet the needs of TCI. Ta Chen Taiwan monitors TCI's inventory …{and} will generally determine what merchandise will be sold to TCI…Ta Chen Taiwan will make stock sale transactions to TCI without TCI's request or consent."

assertions, Ta Chen argues that these facts prove its point: because it monitors TCI's inventory, hardly any contact with TCI is required.

Ta Chen takes issue with Petitioners' reliance on Ta Chen's establishment of transfer price and entry value for the CEP LOT. Ta Chen claims that these activities are more appropriately characterized as order acceptance activities, which it defined in its response as "receiving and processing orders from customers." See Ta Chen's SQR at Exhibit Supp. 8 (Ta Chen's Revised Selling Activities Chart). Therefore, Ta Chen avers that these activities are discussed below and should be ignored for purposes of its customer contact activity with TCI. With regard to Petitioners' argument that the Department verified that any quality problems with TCI's inventory must be referred to Ta Chen, whether it is TCI or TCI's customer that discovers a problem, Ta Chen states that such consultation occurs rarely, if ever. Id. When such consultations do occur, Ta Chen claims that they are straightforward and require less attention than complaints from home market customers. See Ta Chen Verification Report at 40.

Further, Ta Chen notes that the above discussion is relevant only if the Department decides not to ignore selling activities associated with the DINDIRSU field as Petitioners believe that customer contact activities correspond to the DINDIRSU field. Because the statute requires activities corresponding to the DINDIRSU field to be ignored in a LOT analysis involving CEP, Ta Chen argues that the Department should ignore customer contact activities performed for the CEP LOT.

In contrast, Ta Chen states that for home market sales, customer contact is prevalent throughout the sales process as indicated in the Ta Chen Verification Report at 19, where the Department reported that "home market customers usually contact Ta Chen Taiwan to inquire about purchasing certain merchandise using the telephone, email, or fax … Once the logistics are organized, Ta Chen Taiwan will contact its home market customer and convey this information." See Ta Chen Verification Report at 20.

Order Acceptance

Contrary to Petitioners' claim that "{t}he processing time for home-market purchase orders and…transfer price sales should not be markedly different," Ta Chen avers that the difference in intensity between the NV LOT and CEP LOT is reasonable given that home market sales are made in smaller quantities, and thus more frequently, than for U.S. sales. As a result, Ta Chen contends that order acceptance activities are performed more often for home market sales than for its CEP sales. Ta Chen further explains that it expends more sales effort per dollar of sales for the NV LOT than for the CEP LOT.

Ta Chen argues that its intensity designation as "medium" for order acceptance activities for the NV LOT is supported by Ta Chen Verification Report at 19. However, Ta Chen explains that it practically performs no order acceptance activities for its sales to TCI. Ta Chen claims that in most instances TCI does not actually place any orders, as set forth above. Rather, Ta Chen reiterates that it imposes shipments on TCI in order to replenish TCI's inventory.

Notwithstanding this, Ta Chen notes that some order acceptance activities occur. Id. at 21. Therefore, Ta Chen states that it agrees with Petitioners' statement that "the related-party transfer to TCI…requires an expenditure of efforts to support the sale to TCI," which is why it designated the intensity of order acceptance activities for the CEP LOT as "low." See Ta Chen's Revised Selling Activities Chart.

Ta Chen also argues that Petitioners miss the point because they ignore the effect of larger shipments. Ta Chen explains that in terms of order processing and other selling activities, the amount of work (and the resulting intensity level) is primarily dictated by the number of shipments. In other words, Ta Chen states that because larger quantities are shipped to TCI in far fewer shipments than home market transactions, much less work and intensity is required for export employees than home market transaction employees. Moreover, Ta Chen notes that its export transaction employees are dedicated to export transactions of all Ta Chen products, with only a small part of which is subject fittings (around 3 percent in terms of value), further indicating the error in Petitioners' approach, as their calculations do not account for this fact. See Ta Chen's Section A Questionnaire Response, dated September 11, 2007 ("Ta Chen's AQR") at A-15 (page 75).

Ta Chen contends that Petitioners' argument regarding processing times is inadequate as Ta Chen is unaware of the actual "processing" times to which Petitioners refer and their source. Thus, while claiming that it provided no support for the reported intensity, Ta Chen argues that Petitioners themselves, in contradictory fashion, fail to submit positive evidence of why the processing time between home market sales and U.S. sales to TCI are "markedly different." According to Ta Chen, other factors such as sample order documents are much more reliable indicators of whether order processing activities were performed, and their intensity which it claims is supported by abundant record evidence and the Department's verification reports.

As noted above, Ta Chen reiterates that the above discussion is relevant only if the Department decides not to ignore selling activities associated with the DINDIRSU field as Petitioners believe that order acceptance activities correspond to the DINDIRSU field.

Freight and Delivery Arrangements

Ta Chen notes that it reported the intensity of freight and delivery arrangement activities as "high" for the NV LOT and "low" for the CEP LOT. See Ta Chen's Revised Selling Activities Chart. Ta Chen argues that Petitioners' claim that freight and delivery arrangements for the NV LOT are low because of the small amount of home market sales in which Ta Chen incurred inland freight costs misses the mark. Even though it incurred inland freight for only a small fraction of total home market sales, Ta Chen asserts that it nevertheless performed freight and delivery arrangements for every home market sale even if it did not pay for the freight. Furthermore, Ta Chen states that although the customer normally picks up the fittings at Ta Chen's facility, it must: 1) prepare shipping documents; 2) coordinate the delivery time with the customer; 3) allocate adequate pick-up time within its own release schedule; and 4) send shipping documents to customers. Id.

Ta Chen claims that the difference in intensity level between the NV and CEP LOTs is also caused in large part by economies of scale. As stated above, Ta Chen contends that because home market sales are made in much smaller quantities, and thus more frequently, than for U.S. sales to TCI, the freight and delivery arrangements are made more often for the former than for the latter. In contrast, Ta Chen claims that the intensity level for the CEP LOT is low because: 1) although such arrangements are made for a larger quantity of fittings in the context of the CEP LOT, sales at that LOT are made in bulk and to only one customer, TCI; and 2) as TCI is its affiliate and Ta Chen has extensive experience arranging freight and delivery for TCI (over 12 PORs) these arrangements are less burdensome. Ta Chen avers that because it has classified the intensity of freight and delivery arrangements as "low" at the CEP LOT, it is appropriately accounting for economies of scale, as opposed to simply ignoring them, as Petitioners erroneously claim. Ta Chen notes that the Department itself recognized the effect that economies of scale have on the intensity level of this activity and cite to the immediately preceding administrative review, which it further notes was affirmed by the CIT.[3]

Lastly, Ta Chen asserts that Petitioners' concentration on expense fields and expense amounts are wrong. To this end, Ta Chen argues that although it incurred freight and delivery expenses, such expenses are not dispositive of whether activities were performed, or at what intensity but instead represent the amount that it was required to pay third-party vendors for certain services, and not a reflection of any selling activity that Ta Chen may or may not have performed. Ta Chen also argues that Petitioners mischaracterize Ta Chen's position in their claim that it erroneously dismisses freight and delivery arrangements at the CEP LOT "as mere 'administrative' work, … which is not related to selling functions." See Petitioners' Brief at 9. Ta Chen claims that at no time has it argued that freight and delivery arrangements should be ignored as a selling activity nor has it ever claimed that these activities are "administrative" activities. To the contrary, Ta Chen avers that from the start of this proceeding, it has recognized the existence of this activity at the CEP LOT as a selling activity. Rather, Ta Chen notes that it has argued that the intensity with which freight and delivery arrangements are performed at the CEP LOT is low vis-à-vis the home market ("HM") LOT because of economies of scale, as explained above.

With respect to Petitioners' assertion that the U.S. shipment process is extensive, Ta Chen argues that it has never disputed this fact. However, given that far fewer U.S. shipments are made than in the home market (because large quantities are sent to the United States in a single shipment), less effort is required at the CEP LOT than the NV LOT.

Inventory Maintenance

Contrary to Petitioners' assertion that it misreported the intensity level of inventory maintenance as "high" for the NV LOT and inapplicable (i.e., N/A) for the CEP LOT based on

[3] See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 73 FR 1202 (January 7, 2008) (2005-2006 Final Results) and accompanying Issues and Decision Memorandum at Comment 2.

Ta Chen's statement that its shipments to TCI are taken from its Taiwan inventory, Ta Chen argues that Petitioners mischaracterize the record and take this statement out of context. Ta Chen contends that only on rare occasions does it sell fittings from inventory to TCI, therefore, it rarely, if at all, incurs inventory carrying costs for sales to TCI.[4] Ta Chen claims that TCI maintains enormous inventories of subject fittings in its many U.S. warehouses to provide just-in-time delivery to unaffiliated U.S. customers and, therefore, Ta Chen does not have to maintain inventories to support U.S. sales. However, Ta Chen notes that it supplies home market sales on a just-in-time basis. Rather, for most U.S. sales, Ta Chen asserts that the time between order and shipment is several months to allow production in the interim, and only for production-related reasons (not sales reasons) that it may take product from inventory for U.S. shipments. See Ta Chen's CQR at C-46. Thus, Ta Chen argues that the Department should not include inventory maintenance for U.S. sales in its LOT analysis, but only for its home market sales, consistent with prior reviews.

With respect to Petitioners' quantitative comparison of Ta Chen's inventory maintenance designations where they compare average home market, per-unit inventory carrying costs between sales made at the NV and CEP LOT, Ta Chen argues that these carrying costs are similar because Petitioners used the same average number of days that subject fittings are in inventory in the home market when calculating home market inventory carrying costs for sales made at both the NV and CEP LOTs. Using this approach, Ta Chen claims will naturally result in similar average costs across both the NV and CEP LOTs, which illustrates why Petitioners' quantitative approach is unwise.

Risk of Non-Payment

Ta Chen states that it reported the intensity of non-payment risk as "medium" for the NV LOT and inapplicable (i.e., N/A) for the CEP LOT, which Petitioners only "provisionally" accepted. See Ta Chen's Revised Selling Activities Chart. Ta Chen claims that it extends generous credit terms to home market customers, and in some instances home market customers have not paid the full invoice amount. See Ta Chen's BQR at B-10-11 and Ta Chen Verification Report at 40 and 50. In contrast, Ta Chen avers that non-payment risk is nil between a parent company (in this case Ta Chen) and its wholly-owned subsidiary (TCI). Therefore, as in prior reviews, Ta Chen contends that the Department should find that non-payment risk is apparent for the NV LOT and non-existent for the CEP LOT. See 2005-2006 Final Results and accompanying Issues and Decision Memorandum at Comment 2.

Customer Complaints

As to the NV LOT, Ta Chen argues that Petitioners erroneously equate customer complaints with returns. Ta Chen asserts that, as in any business, a customer may have a complaint or concern without returning merchandise and, therefore, the absence of any returns is

[4] Specifically, Ta Chen cites its CQR at C-46 where it stated that "Ta Chen Taiwan usually ships to TCI…several months after the order date, which reflects normal production schedules. In some cases, however, for production efficiency/convenience, Ta Chen Taiwan's shipments to TCI are taken from its Taiwan inventory."

not dispositive of activities related to customer complaints. Ta Chen claims that it fields customer issues on an infrequent basis and hence reported the intensity of this activity as low. Ta Chen contends Petitioners' assertions that it "claims it is 'erroneous' to equate customer complaints with returns…for U.S. sales{, but} claims for home-market sales that 'absence of any returns is not dispositive of activities related to customer complaints'" are factually inaccurate. As noted above, Ta Chen states that this argument applies only to the NV LOT (i.e., home market sales), and it fails to see when and how it ever made a distinction between U.S. and home market sales in making this argument. Ta Chen acknowledges that its argument may equally apply to U.S. sales.

Ta Chen reiterates that TCI or TCI's customer rarely, if ever, consults with Ta Chen regarding product quality problems and when such consultations do occur they are straightforward and require less attention than complaints from home market customers. See Ta Chen Verification Report at 40. Petitioners' claim that such consultations were not rare given the amount of returns during the POR, according to Ta Chen, is factually inaccurate when reviewing record evidence which indicates that only a small percent of total U.S. sales involved returns due to quality problems. Ta Chen states that Petitioners' reliance on Ta Chen's explanation at verification describing the actions taken by Ta Chen and TCI on the rare occasion that a return occurs due to quality problems does not alter the fact that returns are still rare. Ta Chen notes that the Department affirmed the above designations for customer complaints in previous reviews of this order involving Ta Chen. See 2005-2006 Final Results and accompanying Issues and Decision Memorandum at Comment 2.

As noted above, Ta Chen reiterates that the above discussion is relevant only if the Department decides not to ignore selling activities associated with the DINDIRSU field as Petitioners believe that customer complaint activities correspond to the DINDIRSU field.

Payment Processing

Ta Chen notes that it reported the intensity of payment processing activities as "high" for the NV LOT and inapplicable (i.e., N/A) for the CEP LOT. See Ta Chen's Revised Selling Activities Chart. Ta Chen argues that Petitioners' assertion that Ta Chen's CEP LOT designation "ignores the fact that Ta Chen must process payment from TCI, not only on ultimate sales, but for the transfer price sale to TCI..." ignores the fact that TCI, as a wholly-owned subsidiary, wires payment directly to Ta Chen's bank account, while its home market customers remit payment by check and most often for each individual sale.[5] See Ta Chen Verification Report at 48 and 50 and VE-10 (at 556) and 15 (at 3713). Accordingly, Ta Chen claims that hardly any effort is required for TCI's payment, while constant effort is required for home market customer payments. Ta Chen contends that Petitioners' statement that it must process payments "on ultimate sales" is wrong because TCI is responsible for receiving payment from unaffiliated U.S. customers. See TCI Verification Report at 8-9.

[5] Ta Chen also states that the wire transfer it receives from TCI effectively amounts to an intra-bank transfer of funds and is no more than a transfer of funds between Ta Chen affiliates, with a single wire transfer often covering multiple sales.

Contrary to Petitioners' reliance on the existence of a bank charge ("BANKCR1") for the CEP LOT, and the absence of such charges for the NV LOT, to argue that the "payment processing is at least 'low' for the sales from Ta Chen to TCI, while 'N/A' for the home market," Ta Chen notes that bank charges are not dispositive of whether it performed payment processing activities. Rather, Ta Chen claims that because it did not perform an activity for TCI, a charge was incurred. Although Petitioners assert that Ta Chen must trace and record payments in accounts receivable and its bank deposits for sales to both markets, Ta Chen explains that such actions are virtually automatic, with almost no effort required by Ta Chen to ensure that such actions are performed. See Ta Chen's Rebuttal Brief at 34.

For the NV LOT, even though charges associated with the BANKCR1 field were not incurred for processing home market payments, Ta Chen contends that it performed payment processing activities that cannot be ignored in the Department's LOT analysis. Here, as elsewhere, Ta Chen argues that Petitioners wrongly equate a third party receiving payment with a Ta Chen selling activity.

Market Research

According to Ta Chen, Petitioners speculate without support that its designations of market research activities as "high" for the NV LOT and inapplicable (i.e., N/A) for the CEP LOT as wrong because "it is extremely unlikely that any basic market research would benefit only sales of the merchandise sold in the home-market but not exports." Ta Chen argues that this assumption is inapplicable and cites to the Ta Chen Verification Report, which report it noted that market research activities are distinguishable between those performed for home market sales and those performed by Ta Chen for sales to TCI, of which there are virtually none. See Ta Chen Verification Report at 21. As stated above, Ta Chen explains that although market research is conducted for the home market, market projections for sales to TCI are performed by simply monitoring TCI's inventory. Ta Chen further explains that Robert Shieh, the CEO of Ta Chen, also monitors the "international business environment," but not just those relating to fittings. Id. However, Ta Chen argues that these activities hardly constitute the type of formal market research amounting to market research activities. Therefore, Ta Chen has reported that no market research activities are performed for the CEP LOT which is consistent with the Department's findings in previous reviews and the Preliminary Results in the instant review. See 2005-2006 Final Results and accompanying Issues and Decision Memorandum at Comment 2. Rather, these activities are performed by TCI, which is located in the United States and is responsible for U.S. sales.

With respect to Petitioners' claim that the exchange of staff and the traveling of Ta Chen's president suffices as evidence that market research for the CEP LOT should be "at least medium," Ta Chen contends that this argument erroneously assumes, without support, that its president and staff travel in support of Ta Chen's sales of subject fittings and/or performs selling functions as opposed to administrative/management functions. To the contrary, Ta Chen claims that record evidence indicates otherwise. Specifically, Ta Chen notes that subject fittings

constitute a very small percentage of its total sales, indicating no reason to expect that the company's president travels for subject fittings in particular and consistent with the absence of any record evidence regarding such travel. See Ta Chen's AQR at Exhibit A-15 (page 75). Therefore, Ta Chen argues that Petitioners' assertion cannot withstand scrutiny.

As noted above, Ta Chen reiterates that the above discussion is relevant only if the Department decides not to ignore selling activities associated with the DINDIRSU field as Petitioners believe that market research activities correspond to the DINDIRSU field.

Research and Development

From the start of this proceeding, Ta Chen insists, it has been forthcoming about the absence of R&D activities in this POR. See Ta Chen's Revised Selling Activities Chart. Therefore, Ta Chen asserts that this activity is moot for purposes of the Department's LOT analysis in this review.

Technical Assistance

Ta Chen asserts that Petitioners take issue with its designations of technical assistance activities as "high" for the NV LOT and inapplicable (i.e., N/A) for the CEP LOT because Ta Chen reported technical expenses under the FOH field in its cost database. Ta Chen notes that from the start it has explained that its "customers do not reimburse Ta Chen for {technical} services. Thus, Ta Chen does not maintain accounting records that allow it to break out the costs associated with these services." See Ta Chen's BQR at B-26. As a result, Ta Chen explains "all costs related to {home market} technical services are included in Ta Chen's salary expenses, which Ta Chen reports in its Section D Questionnaire Response, dated September 24, 2007 ("Ta Chen's DQR"). Ta Chen claims that it reported technical assistance costs in such a manner because it has no other reasonable method to report such expenses. Furthermore, Ta Chen argues that its approach is consistent with the Department's long-standing practice of treating salary expenses associated with technical assistance as fixed costs and, therefore, it appropriately classified expenses associated with these activities under FOH. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy, 64 FR 30750, 30769 (June 8, 1999) and Notice of Preliminary Results of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan, 60 FR 43769, 43770 (August 23, 1995).[6]

More importantly, Ta Chen claims that its inclusion of home market technical assistance expenses under the FOH field of its cost database does not justify ignoring the corresponding selling activity because the classification of the function's expenses is irrelevant for purposes of identifying and comparing selling activities between relevant markets. Because it performed these activities (despite how it classified them), Ta Chen contends that the Department should recognize these activities. Despite Petitioners' arguments, Ta Chen asserts, neither the statute

[6] Ta Chen also cites to the Department's Antidumping Duty Manual at 28-29 (January 22, 1998). See Ta Chen's Rebuttal Brief at 38, footnote 129.

nor the Department's practice provide a basis for ignoring activities just because such activities' expenses cannot be segregated from a respondent's production costs.

Ta Chen reiterates that it performed technical assistance for the NV LOT, which involved "advising customers as to the characteristics of subject fittings and determining whether fittings meet customer's needs, testing of fittings' performance characteristics, and visiting customers related to {those} functions." See Ta Chen's Revised Selling Activities Chart. Those activities, as verified by the Department, Ta Chen notes, are performed not only as part of standard quality control tests, as Petitioners erroneously allege, but for a few select customers that request it. See Ta Chen Verification Report at 36, and 38-39. Despite Petitioners' "fixation" on a purported absence of travel expenses related to technical assistance as undermining its designations, Ta Chen argues that nothing in the statute, the regulations, or the Department's practice requires travel expenses be incurred for this selling activity to be considered valid. Ta Chen contends that this assistance can be provided via phone, e-mail, or by the customer visiting its location. Moreover, Ta Chen explains that such assistance methods would still allow for individualized technical assistance, as opposed to generic advice. Lastly, Ta Chen notes that although it may not have visited customers for technical assistance purposes during this POR, it has visited customers in the past and may do so in future and, therefore, it mentioned "visiting customers" as part of its description for technical assistance. See Ta Chen's Revised Selling Activities Chart.

Packing and Loading

In Ta Chen's Revised Selling Activities Chart, Ta Chen notes that it reported the intensity of packing and loading activities as "high" for the NV LOT and inapplicable (i.e., N/A) for the CEP LOT. However, Ta Chen acknowledges that the CEP LOT designation is incorrect as shown in the TCI Verification Report where, Ta Chen notes, it readily admitted its error upon the Department's inquiries during verification. See TCI Verification Report at 10. Because it ships fittings to TCI internationally via ocean carrier, Ta Chen explains that it must perform packing/loading functions for its sales to TCI. Therefore, Ta Chen states that the correct packing/loading activity designation for the CEP LOT is "high."

Ta Chen notes that Petitioners argue that the NV LOT designation for packing/loading activities should be "medium" because Ta Chen does not package fittings for the home market, but will load them onto the customer's truck. Ta Chen also notes that Petitioners' contention that "the loading of fittings onto a customer's truck is not packaging of the merchandise" and, thus, "true packing should have been zero." Ta Chen characterizes that Petitioners' argument as "bizarre" because the very terms of this selling activity covers both packing and loading. This was made clear, Ta Chen avers, in its responses when it identified this activity as "packing of fittings and/or loading of fittings onto customers' trucks." See Ta Chen's Revised Selling Activities Chart. Ta Chen notes that Petitioners themselves identify this activity as "Packing/Loading" in their case brief.

Ultimately, Ta Chen contends that its identification of the loading activity is warranted because it performs this activity, and incurs an expense, in support of its sales to home market

customers. Ta Chen explains that it combined the two items into a single category because they are essentially part of the same activity, and because it reported the labor cost associated with loading in the packing field ("PACKH") which it notes has been accepted by the Department in past reviews.

Ta Chen claims that Petitioners' argument regarding its use of the same per-unit cost for packing labor for both its home market and U.S. sales is irrelevant for purposes of the Department's LOT analysis. Lastly, Ta Chen contends that Petitioners erroneously rely upon expenses in demonstrating that packing/loading activities for the NV LOT are performed with less intensity than that of the CEP LOT. Ta Chen argues that those expenses include packing materials, which are not dispositive of the intensity with which packing/loading activities were performed for each LOT and effectively illustrate why Petitioners' focus on expenses, as opposed to activities, is wrong.

After-Sales Services

Ta Chen states that it reported the intensity of after-sales services as "low" for the NV LOT and inapplicable (i.e., N/A) for the CEP LOT, noting that Petitioners accuse Ta Chen of ignoring "the support functions on the transfer sales." Ta Chen claims that most after-sales services are covered by other selling activity categories. Ta Chen notes that it defined after-sales activities as including post-sale activities, such as price adjustments, issuance of credit memos, and providing documentation requested by customers. See Ta Chen's Revised Selling Activities Chart. According to Ta Chen, the Department found in prior reviews that these functions are performed minimally for the NV LOT and very rarely for the CEP LOT.

As noted above, Ta Chen reiterates that the above discussion is relevant only if the Department decides not to ignore selling activities associated with the DINDIRSU field as Petitioners believe that after-sales activities correspond to the DINDIRSU field. However, Ta Chen argues that activities relating to the DINDIRSU field must be ignored for purposes of the Department's LOT analysis as discussed above.

Travel and Entertainment

Ta Chen rejects as "unsupported speculation" Petitioners' characterization of Ta Chen's travel and entertainment activities as "medium" for the NV LOT and inapplicable (i.e., N/A) for the CEP LOT is wrong because: Ta Chen officials, as they do for home market sales, must travel and entertain in support of Ta Chen's sales to TCI. See Ta Chen's Rebuttal Brief at 42. However, Ta Chen argues that Petitioners fail to recognize that travel and entertainment in support of the CEP LOT is unnecessary, a fact which, Ta Chen claims, is deducible from the sales process between Ta Chen and TCI, as outlined in the Ta Chen Verification Report at 20-23 and recognized by the Department in prior reviews. Ta Chen avers that as the parent company it need not expend any effort to sell to TCI, its wholly-owned subsidiary. Ta Chen notes that TCI is responsible for U.S. sales including traveling to and entertaining U.S. customers, while Ta Chen merely processes orders by TCI. Ta Chen further notes that because fittings constitute only

a fraction of TCI's product line, a point contested by Petitioners, there is no reason to believe that any traveling and entertainment would necessarily be for fittings in particular. See Ta Chen's Rebuttal Brief at 42, citing TCI Verification Report at 11-13, Ta Chen's SQR at Exhibit Supp.-36, and Ta Chen's AQR at Exhibit A-15 (page 75). Ta Chen argues that Petitioners' opposition is without merit as an abundance of record evidence demonstrates that only a tiny fraction of Ta Chen's total sales constitute sales of subject fittings. Id., citing to the TCI Verification Report at 11-13 and Ta Chen's SQR at Exhibit Supp.-36. Ta Chen further argues that such evidence independently corroborates the absence of traveling or entertaining specifically for subject fittings. Furthermore, as noted in the Ta Chen Verification Report at 22, Ta Chen explains that the president of Ta Chen is responsible for the management/administration of Ta Chen (i.e., not a sales person), and frequently travels "on business," which is not limited to subject fittings.

In any event, Ta Chen reiterates that the above discussion is relevant only if the Department decides not to ignore selling activities associated with the DINDIRSU field as Petitioners believe that travel and entertainment activities correspond to the DINDIRSU field. However, Ta Chen argues that activities relating to the DINDIRSU field must be ignored for purposes of the Department's LOT analysis as discussed above.

Given the above factual analysis, Ta Chen believes that it has reaffirmed the validity of its reported selling activities for the NV and CEP LOTs (except where noted above). See Ta Chen's Revised Selling Activities Chart and Exhibit 1 of Ta Chen's Rebuttal Brief. Based on a comparison of the selling activities performed for the NV and CEP LOTs, and their relative intensities, Ta Chen claims that NV and CEP are compared at different LOTs. Specifically, Ta Chen contends that 13 selling activities are performed for the NV LOT, while only three are performed for the CEP LOT. See Ta Chen's Rebuttal Brief at 44-45.

Ta Chen asserts that even when using Petitioners' quantitative analysis (assuming, arguendo, that it is a valid methodology), it is clear that the HM LOT is at a more advanced stage of distribution than the CEP LOT. See "Ta Chen Selling Activities and Associated Intensities" chart at 45 of its Rebuttal Brief ("Ta Chen's Quantitative LOT Analysis Chart"). Ta Chen believes that the data in Ta Chen's Quantitative LOT Analysis Chart demonstrate that, in terms of the number/level of selling functions coupled with their intensity, it performs almost five times more selling activities for the NV LOT than for the CEP LOT. Ta Chen avers that this result is not surprising given that its home market sales are to end-users, while its U.S. sales are to its U.S. affiliate, TCI, a master distributor. Ta Chen reiterates that it is important to note that the quantity of each individual sale in the home market is small but significantly larger for its shipments to TCI.

Ta Chen clarifies that the quantitative analysis put forth in Ta Chen's Quantitative LOT Analysis Chart conservatively assumes that the Department will consider CEP LOT selling activities that were actually performed and are associated with the DINDIRSU field. However, Ta Chen insists that the Department should not consider the activities associated with the DINDIRSU field as purported by Petitioners, i.e., order acceptance, as opposed to administrative

paperwork processing. Ta Chen further argues that, ignoring DINDIRSU activities from its analysis, only two selling activities are performed for the CEP LOT, while 13 are performed for the NV LOT (where selling activities for the NV LOT are performed six times greater than those for the CEP LOT).

Ta Chen argues that the result is similar when using the four major categories used by the Department, assuming that the Department will consider CEP LOT selling activities that were actually performed and are associated with the DINDIRSU field. See Ta Chen's Rebuttal Brief at 46. Ta Chen explains that, considering the analysis put forth on page 46 of its rebuttal brief, in every category except for one, more selling activities are performed (and more intensely) for the NV LOT than for the CEP LOT. Particularly, Ta Chen notes that the category consisting of the most selling activities, "Selling and Marketing," selling activities are performed over 14 times greater at the NV LOT than for the CEP LOT.

Additionally, Ta Chen argues that Petitioners fail to address or present any specific evidence regarding other critical issues relevant to a LOT analysis, including: 1) whether the difference between the NV and CEP LOT "is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different {LOTs} in the country in which {NV} is determined;" and 2) the relevancy of customer categories where Ta Chen's home market sales are more remote (to end-users) than its sales to TCI (affiliated master distributor). Ta Chen avers that these factors, and others, are critical in any LOT analysis. However, Petitioners' failure to overcome them, much less address them, Ta Chen avers, justifies rejection of Petitioners' arguments and the continued application of a CEP offset to the dumping margin for Ta Chen.

Furthermore, Ta Chen contends that Petitioners' reliance on the Department's verification findings to make numerous general arguments applicable to two or more selling activities are equally unavailing and should be ignored by the Department. Specifically, Ta Chen takes issue with the general arguments raised by Petitioners including: 1) the general lack of evidence from the verification reports to support Ta Chen's home market selling activities; and 2) their conclusion that the CEP LOT is more advanced than the NV LOT because "the verifiers' review process required far more time, explanation, and documentation of many more functions and resulting expenses{.}"

With respect to Petitioners' first argument, Ta Chen states that, as an initial matter, the verifiers during the Ta Chen Taiwan verification did not have the opportunity to verify each and every home market selling activity, nor did they verify selling activities generally as a separate verification item.[7] Nevertheless, Ta Chen argues that contrary to Petitioners' assertions otherwise ample evidence, including that uncovered in the normal course of verification, exists to support many of the home market selling activities, as demonstrated in its LOT analysis (set forth above).

[7] Ta Chen notes that given the limited time, verification entails a series of spot checking, as repeatedly recognized by the Department and the courts.

With respect to Petitioners' second argument, Ta Chen contends that this argument is flawed and should be summarily rejected. Specifically, Ta Chen argues that nothing in the statute, regulations, or the Department's practice provides a sufficient basis for considering the amount of "time, explanation, and documentation" at verification in making a LOT determination. Moreover, Ta Chen asserts that the amount of "time, explanation, and documentation" required to explain a selling activity performed at the CEP LOT has virtually no logical correlation with the selling activity or the intensity with which selling activities were performed. See Ta Chen's Rebuttal Brief at 48-49.

Ta Chen also takes issue with Petitioners' claim that "{d}uring verification of TCI, company officials indicated that they could not provide 'specific information supporting the characterization of many of the activities' reported as 'low,' 'medium,' or 'high.'" See Ta Chen's Rebuttal Brief at 49. Ta Chen claims that Petitioners take this statement out of context and thereby mischaracterize the actual exchange between TCI and the Department regarding the CEP LOT. Ta Chen notes that the verification report statement continues, "Rather, TCI looked at each specific selling activity and the description of duties and estimated the level of either Ta Chen or TCI's involvement in each field." Thus, viewed in context, Ta Chen claims that, although it provided no documentation specifically supporting the characterization of the selling activities and their intensity, it did provide specific information orally to the Department. As noted in the report, Ta Chen avers, the Department and Ta Chen "discussed the merits of Ta Chen and TCI's classification of each item." Ta Chen argues that this approach is actually the normal way selling activities are verified for CEP LOT analysis purposes, in part reflecting practical realities that there may be no other way to verify the activities. To that end, Ta Chen avers that all of the Department's questions were answered. Ta Chen explains that it provided documentation as to the figures in its home market and U.S. sales databases, most notably home market inventory carrying costs and indirect selling expenses that are not incurred by Ta Chen on its U.S. sales. Ta Chen suggests that the absence of such expenses ties directly to the CEP LOT issue and the specific CEP LOT offset to be made. Ta Chen argues that verification of CEP LOT issues occurred at Ta Chen Taiwan, not TCI, and, therefore, Petitioners' focus on the TCI verification is misplaced.

With respect to Petitioners' reliance on the 1999-2000 Review as support for denying a CEP offset to Ta Chen in the instant review, Ta Chen argues that Petitioners' reliance is misplaced as it is factually inapposite to this review in several ways.[8] First, Ta Chen claims that technical services were not applicable in the 1999-2000 Review and thus not reported, while technical services are applicable in this review and thus reported, as demonstrated above. Second, according to Ta Chen, the Department's rejection of a CEP offset in the 1999-2000 Review rested in large part on the Department's finding that Ta Chen failed to report packing or freight activities for the CEP LOT and the absence of freight activities for the NV LOT. See Ta Chen's Rebuttal Brief at 50-52, citing the 1999-2000 Review and accompanying Issues and Decision Memorandum at Comment 2. However, Ta Chen states that in the instant review it has clarified that it does perform selling activities related to packing and freight for the CEP LOT and that it performs freight and delivery arrangements for the NV LOT. Third, and most

[8] Ta Chen notes that the Department's findings in the prior review are not controlling in the instant review.

importantly, Ta Chen contends that the Department in the 1999-2000 Review ignored the economies of scale associated with U.S. sales of subject fittings which has since been resolved and accepted by the Department as recently as the 2005-2006 review. See Ta Chen's Rebuttal Brief at 51. Moreover, in the 1999-2000 Review, Ta Chen explains that the Department rejected its claim for a CEP offset because it failed to submit "information on the record that clearly identified the difference between the LOTs to warrant a CEP offset" which is not the case in the instant review. Ta Chen claims that it has sufficiently demonstrated and submitted ample evidence for the record to support its entitlement to a CEP offset in the instant review. Ta Chen concludes that Petitioners fail to overcome the factual differences between the two reviews and explain why the findings in that review apply to the instant review. Therefore, Ta Chen concludes, the Department should ignore Petitioners' reliance on the 1999-2000 Review.

Department's Position:

We have re-examined the evidence on the record in light of the comments by all parties, and have determined that the NV LOT is not more advanced that the CEP LOT. Therefore, we will not apply a CEP offset to Ta Chen's NV. With respect to Petitioners' proposed quantitative analysis of Ta Chen's selling expenses in all markets, the Department believes that such an analysis is contrary to the Department's standard practice and regulations, and did not use this methodology in its analysis. Rather, the Department relied on its standard methodology of reviewing selling activities.

It is worthwhile to review the Department's standard methodology before turning to the arguments proffered by both Petitioners and Ta Chen. In analyzing the respective LOTs for home market sales and U.S. CEP sales, the Department's practice is to "examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer." See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Romania: Preliminary Results of the Antidumping Duty Administrative Review, 72 FR 44821, 44824 ("HRS from Romania") (August 9, 2007) (unchanged in final results, Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 71357 (December 17, 2007)); see also Certain Pasta from Italy; Notice of Preliminary Results and Partial Rescission of Tenth Antidumping Duty Administrative Review, 72 FR 44082, 44084-85 (August 7, 2007) (unchanged in final results, Certain Pasta from Italy: Notice of Final Results of the Tenth Administrative Review and Partial Rescission of Review, 72 FR 70298 (December 11, 2007)). If the home market sales are at a different LOT than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which NV is based and home market sales at the LOT of the export transaction, the Department makes a level of trade adjustment under 19 U.S.C. § 1677b(a)(7)(A). See HRS from Romania at 44824. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NC and CEP affects price comparability, we adjust NV under section 1677b(a)(7)(B) (the CEP offset). Id. Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See 19 C.F.R. § 351.412(c)(2). Some overlap in selling activities will not preclude a determination that two sales are at different

stages of marketing. Id. It is within this framework that the Department conducts its LOT analysis.

Quantitative Analysis

Petitioners' quantitative analysis of Ta Chen's home market and U.S. sales databases is inconsistent with the Department's regulations and standard practice, which direct the Department to examine selling activities as opposed to selling expenses when performing its LOT analysis. Moreover, Petitioners' attempt to "correct" Ta Chen's selling activities chart using the qualitative designations for the intensity at which the activities are performed, i.e., "high," "medium," "low," and "N/A (not applicable)" is inappropriate because Petitioners continue to rely upon the amounts reported as selling expenses to represent the level of intensity at which the activity is performed.

Petitioners' quantitative analysis is inappropriate because it assumes that the expense data reported by Ta Chen are an accurate depiction of the level of intensity in which the selling activities are performed. In fact, Petitioners conflate the two terms "selling expenses" and "selling functions" impermissibly throughout their brief. See, e.g., Petitioners' Brief at 8 ("Ta Chen's Claims Rest on Its Attempt to Decouple Selling Functions from Selling Expenses While Simultaneously Inventing New Selling Functions that It Only Recognizes for Home-Market Sales"), and at 13 ("Under the Department's practice, the analysis of comparable selling expenses excludes all expenses incurred in the U.S. as the CEP agent re-sells the subject merchandise, i.e., the Department excludes the selling functions that are undertaken by TCI in order to make the sale to the first unaffiliated customer and that are deducted only under 19 U.S.C. § 1677a(d)."). Selling expenses do not translate directly into selling activities, nor do they always capture the degree to which the activities are performed.

The Department's focus on selling activities rather than selling expenses is supported by the statute, which specifies that a difference in LOTs "involves the performance of different selling activities." See 19 U.S.C. § 1677b(a)(7)(A). The Statement of Administrative Action to the Uruguay Round Agreements Act also specifies that "Commerce will grant such {LOT} adjustments only where: (1) there is a difference in the level of trade (i.e., there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets); and (2) the difference affects price comparability." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, p. 829, reprinted in 1994 U.S.C.C.A.N. 3773, 4168 ("SAA"). Finally, the Department's regulations similarly follow the language in the statute, specifying that we will determine that sales are made at different LOTs if they are made at different marketing stages or their equivalent. See 19 C.F.R. § 351.412(c)(2). Thus, the Department's analysis of selling activities/functions is grounded in the statute and regulations, unlike Petitioners' expense field analysis, for which they cite no authority.

Although the Department does consider selling expenses, it does not consider them at the exclusion of the selling activities themselves. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Italy, 67 FR 3155 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 37. The CIT has also expressed

concerns with using a purely quantitative analysis. See Prodotti Alimentari Meridionali, S.R.L. v. United States, 26 CIT 749, 754 (2002) ("Prodotti"). In Prodotti, the respondent reported ten customer categories in its home market as the basis for identifying sales at different LOTs in the chain of distribution. Rather than adopt the respondent's grouping, the Department developed a methodology to analyze the various selling functions of a particular seller by assigning a ranking factor (i.e., high, medium, low) to a selling function solely based upon the number of observations for which a direct expense associated with the selling function actually occurred. The Department explained that this particular analysis did not determine the final LOT, but that it instead used a more general qualitative approach. Id. Noting that "the court questions the usefulness of this quantitative analysis for any purpose, {the respondent} has not explained how the analysis adversely affected the margin other than to state that the analysis was 'distorted,'" the CIT declined to remand on the issue. Id. at 754.

Petitioners argue that the "actual expenses incurred with selling functions, as actually reported, provide a much more objective, complete, and accurate measure of relative selling functions, both qualitatively and quantitatively, then the subjective, incomplete, and inaccurate 'low,' 'medium,' and 'high' designations provided by Ta Chen." See Petitioners' Brief at 17. In the first category of proposed adjustments, Petitioners "correct" the following selling activities based on the expenses reported for the fields corresponding to each activity: 1) customer contact; 2) order acceptance; 3) freight and delivery arrangements; 4) inventory maintenance; 5) risk of non-payment; 6) customer complaints; 7) payment processing; 8) market research; 9) R&D; 10) technical assistance; 11) packing/loading; 12) after-sales service; and 13) travel and entertainment. As discussed above, strict reliance on the amounts of the reported selling expenses is not a reliable measure of the relative levels of intensity in which each selling activity is performed. On this basis alone, we believe that it is reasonable to reject Petitioners' proposed methodology.

However, there are additional flaws in the adjustments proposed by Petitioners. Petitioners claim as "selling activities" certain functions that are not typically considered to be selling activities. Further, the charges associated with those activities are indicative of the intensity of performing the activity. For example, in their discussion of expenses related to packing and loading (see Petitioners' Brief at 35-36), PACK1U and PACK2U pertain to packing costs for wooden boxes and other packing materials. One cannot tell from the relative expenses incurred to buy packing materials the degree to which the selling activity of packing was actually performed. In any event, the correct analysis is the level of intensity at which these activities are performed. If Ta Chen Taiwan had arranged for two types of packaging for its merchandise, one expensive and the other inexpensive, the intensity of the activity may well be the same even though the expense would be substantially different. In another example, customs broker charges and other export charges – including Taiwanese harbor maintenance fees to expedite exports, packing expenses, marine insurance, international freight, U.S. import duties (see Petitioners' Brief at 21-26) – are movement charges and are associated with selling activities, but the level of the selling activities is not clearly indicated by the amount of the movement charges.

Moreover, under Petitioners' methodology, all export price and CEP sales would always

demand a "high" level of intensity if the Department were to consider all the movement expenses and requisite fees required for shipment of the subject merchandise to the U.S. affiliate. As evidenced by Petitioners' calculation of the freight and delivery expenses for Ta Chen's sales to TCI compared to the home market expense, freight and delivery alone would skew any quantitative calculation in favor of finding that the sales to the United States affiliate is at a more advanced LOT. See Petitioners' Brief at 25-26. For this reason the Department is required to consider the selling activities themselves and not only their attendant expenses, as argued by Petitioners.

Petitioners also erroneously allot all the expenses reported in certain fields to one selling activity, when those fields include expenses attributable to other activities. Specifically, with regard to the activity "customer contact to consider/negotiate inquiries," Petitioners claim that the proper analysis is to compare indirect selling expenses incurred in Taiwan for home market sales of the foreign like product ("INDIRSH") to indirect selling expenses incurred in Taiwan for U.S. sales of subject merchandise ("DINDIRSU"). See Petitioners' Brief at 18. However, such a comparison is imprecise because the INDIRSH field includes expenses that relate to other selling activities. Such imprecision underscores the flaws in Petitioners' quantitative analysis.

We agree with respondent Ta Chen's statement that the focus of the LOT analysis is on selling activities, as dictated by the statute. See Ta Chen's Rebuttal Brief at 13. Ta Chen also states that Petitioners rely on the aggregate number of selling expense fields, rather than selling activities, to support Petitioners' argument that the U.S. market is at a more advanced LOT. Ta Chen notes that Petitioners identified 5 expense fields purporting to correspond to home market selling activities, while identifying 14 fields for U.S. market selling activities. Id. at 14-15. We agree with Ta Chen that the use of the number of expense fields in a LOT analysis is contrary to the statute and the Department's standard practice. Additionally, we agree with Ta Chen that the expense amounts are not dispositive factors in a LOT analysis. Id. at 16-17.

Therefore, for the reasons cited above, the Department does not believe that Petitioners' quantitative approach to determine LOT is appropriate, and we will not use Petitioners' quantitative analysis of Ta Chen's selling expenses in lieu of our standard practice of analyzing selling functions.

Selling Functions for 'Indent Sales' to the United States

On the other hand, Ta Chen's arguments that the Department should not consider selling activities associated with 'indent sales' are based on flawed reasoning. Ta Chen equates the selling expenses associated with indent sales to be the same as selling functions, as Petitioners do in their arguments. Both Petitioners and Ta Chen also argue extensively about whether the Department should include the selling expenses and associated selling activities captured in the DINDIRSU field in its analysis. However, where Petitioners essentially argue that an analysis of selling expenses should substitute for an analysis of selling functions, Ta Chen argues that since the Department deducts certain selling expenses under 19 U.S.C. § 1677a(d) in the

calculation of CEP sales it should also disregard the selling functions associated with those deducted expenses.

Ta Chen argues that the Department's LOT analysis "begins with establishing the CEP LOT." See Ta Chen's Rebuttal Brief at 7. Ta Chen quotes 19 C.F.R. § 351.402(a) and 19 U.S.C. § 1677a(d) to indicate that the CEP LOT is based on the starting price as defined under the statute and regulation. Ta Chen then states that the CEP LOT is established based on the U.S. affiliate's starting price in the United States, after the CEP deductions under 1677a(d). Id. at 8. The Department concurs with these statements. Additionally, Ta Chen cites to Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review and Mitsubishi Heavy Indus., Ltd. v. United States, as supporting the practice of deducting selling expenses incurred by or for the producer or exporter, or the U.S. affiliate, in selling the subject merchandise in the United States. Id. at 9. Again, the Department agrees that such expenses should be deducted.

However, Ta Chen immediately goes on to state the following: "In other words, the CEP LOT is established without regard to selling activities associated with subsection (d) expenses. More importantly, the selling activities ignored in establishing the CEP LOT include those that are performed by the respondent's home market entity for the first unaffiliated U.S. customer, even if those activities were performed in the home market" (emphasis omitted). We agree that selling activities performed for the sale to the unaffiliated U.S. customer (that is, TCI's U.S. customer) should be ignored, even if performed by Ta Chen in the home market. However, Ta Chen's performance of selling activities in support of its sales to its affiliate TCI must not be ignored.

It is the Department's standard practice to do a LOT analysis of selling activities for CEP sales under 19 C.F.R. § 351.412(c)(1) after deducting the selling expenses for CEP sales under § 772(d) of the Tariff Act of 1930, as amended ("the Act"). See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review, 71 FR 62082 (October 23, 2006) (unchanged in final results, Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 18204 (April 11, 2007); "For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act") See also 19 C.F.R. § 351.412(c)(1)(ii). Under § 772(d) of the Act, selling expenses incurred by Ta Chen in support of its sales to TCI are not deducted. Thus, to the extent that activities related to such expenses are performed by Ta Chen in support of Ta Chen's sales to its affiliate TCI, regardless of whether the corresponding expenses are captured in the DINDIRSU field or in other locations, the Department has included them in the CEP LOT. The Department will not consider selling activities provided by Ta Chen in support of TCI's sales to unaffiliated U.S. customers as these are associated with the selling expenses that must be deducted under § 772(d) of the Act, regardless of their location in the reported expense fields.

Analysis of Selling Functions

When examining sales to the United States, the Department must consider all of the selling functions for all types of sales. All of Ta Chen's sales to the United States were CEP sales made through its U.S. affiliate, TCI. There were two types of CEP sales; those sales from TCI's inventory to unaffiliated customers, and "back-to-back" CEP sales (called 'indent sales' by Ta Chen) where merchandise is shipped directly from the foreign manufacturer/reseller to the unrelated U.S. customers. For 'indent sales', Ta Chen invoices TCI and TCI invoices the unrelated customers. Thus, while the channel of distribution for U.S. sales is from Ta Chen to TCI, there are different types of sales within this channel of distribution and different selling activities provided by Ta Chen to TCI depending upon the type of CEP sale. However, the Department does not find these CEP sales to be at different LOTs. The types of customers are identical. See Ta Chen's AQR at 17-18, and Ta Chen's First SQR at 5. Additionally, the selling functions provided by Ta Chen to TCI for both types of sales are substantially similar, as analyzed below. Therefore, we continue to find one LOT in the United States.

The Department will analyze the various selling activities identified by Ta Chen for sales in the home market to unaffiliated customers, and for sales by Ta Chen to TCI. We will examine each of the selling activities individually. Additionally, we will analyze the selling activities within the framework of the four selling function categories of sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services.

In doing our analysis, the Department agrees with petitioners that it is inappropriate to classify the same activity as "selling" in one market and "administrative" in another. See Petitioners' Brief at 5-6. Petitioners note that Ta Chen stated in its letter that the clerical processing of invoices for TCI is more an administrative activity than a selling activity. Id. Ta Chen reiterates this argument in its rebuttal brief. See Ta Chen Rebuttal Brief at 6. Such activity broadly falls under the "Order Acceptance" selling function. Ta Chen processes invoices for both home market sales and sales to TCI. Therefore, we do not find any evidence that the classification is different in either market, or that the intensity is different in either market. In addition, although Ta Chen characterizes this and other activities as administrative functions, we consider them to be selling activities because they are performed as an essential part of the sales process.

Lastly, Petitioners' reliance upon the 1999-2000 Review, or Ta Chen's reliance on the 2005-2006 Final Results and Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 71 FR 67098 (November 20, 2006) are not particularly instructive. See Petitioners' Brief at 47-49 and Ta Chen's Rebuttal Brief at 16. Determinations in one administrative review are not binding in subsequent reviews. See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review, 67 FR 11283 (March 13, 2002) ("Fresh Garlic") and accompanying Issues and Decision Memorandum at Comment 3 (each "review is a separate reviewable segment of the proceeding involving different sales, adjustments, and underlying

facts. What transpired in previous reviews is not binding precedent in later reviews."). Moreover, to the extent that the selling functions are different in this review, we will not rely on the factual analysis in any of the three reviews cited above.

For the 1999-2000 Review, the Department undertook a step-by-step analysis of the various selling functions claimed by parties in that review.[9] See 1999-2000 Review and accompanying Issues and Decision Memorandum at Comment 2. We will undertake a thorough step-by-step analysis of each selling function, in a manner similar to that employed in the 1999-2000 Review.

Customer Contact

In its AQR, Ta Chen indicated that it performs customer contacts, including all selling efforts, for home market sales. In contrast, Ta Chen states that TCI performs the same services for U.S. customers. See Ta Chen's AQR at 18-19. Ta Chen further indicated that customer contact with TCI was "N/A" while customer contact in the home market was "medium." See Ta Chen's Revised Selling Activities Chart and Ta Chen's Rebuttal Brief at 18. In its rebuttal brief, Ta Chen stated that there was little communication with TCI because Ta Chen monitors TCI's inventory and makes sales to TCI without the request or consent of TCI. See Ta Chen's Rebuttal Brief at 18-19. Ta Chen further states that "because Ta Chen Taiwan monitors TCI's inventory, hardly any contact with TCI is required. Id. at 19.

Petitioners claim that it is TCI, as the customer, whose contact places the purchase orders with Ta Chen. See Petitioners' Brief at 18. Petitioners state that the monitoring of TCI's inventory by Ta Chen "requires company attention, planning and contact with TCI." Id.

During the verification of Ta Chen in Taiwan, the Department noted that Ta Chen had some contact with home market customers. "We asked how often the sales staff is in contact with home market customers. Ta Chen stated that the sale department's telephone contacts with home market customers ranged from a few to perhaps 20 telephone calls per month." See Ta Chen Verification Report at 20. The Department found no evidence of long-term contracts or extensive negotiations with home market customers. In fact, customer contacts were fairly limited. Id. at 8, 19-20. Additionally, Ta Chen's primary focus is on developing export sales, and it sometimes discourages customers in the home market from placing small orders. Id. at 19. For U.S. sales out of inventory, Ta Chen states that it has access to TCI's inventory system, and monitors TCI's inventory. Id. at 21. For "indent sales," TCI contacts and places a purchase order with Ta Chen. See TCI Verification Report at 9, where the Department noted that "{p}age 6213 begins TCI's purchase order to Ta Chen."

[9] We disagree with Ta Chen that the Department's rejection of a CEP offset in the 1999-2000 Review rested in large part on the Department's findings with respect to packing and freight activities in that review. Additionally, we disagree with Ta Chen that the Department inappropriately ignored economies of scale associated with sales of fittings in the 1999-2000 Review. As to economies of scale, see the Order Acceptance section below. We do not have clear evidence on the record to indicate that the size or frequencies of the sales affect the intensity of the provision of the selling activities.

Based on the evidence on the record, there is regular customer contact with Ta Chen in both the home market and CEP levels of trade. Customer contact between Ta Chen and home market customers appears to be at a "medium" level, while contact between Ta Chen and TCI is "low" to "medium" depending upon the type of U.S. sale.

Order Acceptance

With respect to Ta Chen's arguments, the Department first notes that "indent sales" to TCI require at least the same level of order processing as home market sales. Thus, the record indicates that some sales to TCI receive more order processing than Ta Chen indicated. With respect to the relative size of sales, the Department found at verification one home market sale (Ta Chen VE-15) that contained more pieces than any of the observed U.S. sales. The Department does not believe this is a "small" sale with small quantities relative to U.S. sales. See Ta Chen Verification Report at 49. Nevertheless, arguments with respect to economies of scale are similar to the arguments regarding sales expenses versus sales activities. Unless the provision or intensity of certain selling activities is based on the sizes or frequencies of sales, such size differentials are immaterial. The Department explained in another case that it does "not take transaction size or unit value of sales into account in determining level of trade because these are not selling activities." See Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy, 67 FR 300 (January 3, 2002), and accompanying Issues and Decision Memorandum, at Comment 6. We also do not have clear evidence on the record to indicate that the size or frequencies of the sales affect the intensity of the provision of the selling activities. Based on the evidence on the record, we find that order acceptance selling activity is at the same level of intensity for both markets.

Freight and Delivery Arrangements

For home market sales, Ta Chen argues that even if it did not deliver merchandise to the customer, it had to "perform freight and delivery arrangements" for all home market sales. Such arrangements, according to Ta Chen, include preparing shipping documents, coordinating the delivery time with customers, allocating the pick-up time, and sending shipping documents to customers. See Ta Chen's Rebuttal Brief at 25. If a customer is picking up merchandise, however, there can be no "coordination of delivery times" since there is no delivery by Ta Chen. Additionally, the preparation of shipping documents and the sending of such documents to customers occur in all markets, not just the home market. See Ta Chen Verification Report at 50-58 and VE-11-12, VE-14, and VE-17 for evidence of shipping documents.

Moreover, while Ta Chen delivers merchandise for only a few sales in the home market, Ta Chen is responsible for freight and delivery of all sales to TCI, whether these are sales for inventory or 'indent sales.' "We asked who arranges the freight and shipment from the Tainan port to the United States for all sales made to TCI. The company responded that Ta Chen Taiwan is responsible for arranging the shipment of the product, the ocean voyage carrier, and

the customs clearance documentation." See Ta Chen Verification Report at 23. "We asked about the arrangement for freight for merchandise that was toll-processed. For export sales, we asked who arranged for the various stages of freight (e.g., pipe input to subcontractors' processed fittings from subcontractors to Ta Chen Taiwan, etc.). The company indicated that Ta Chen Taiwan typically arranged for all the freight, all the way through to the international freight, though sometimes the subcontractors would share the responsibility . . ." Id. at 26.

Ta Chen notes that the Department accepted its designation of intensity for this sales activity in the previous review. See Ta Chen's Rebuttal Brief at 26. However, the Department's determination in that review was made without the benefit of verification. Similarly, we are not persuaded by Ta Chen's economies of scale arguments. Id. at 25. While there may be more home market sales in smaller quantities, as Ta Chen states, the facts on the record indicate that the majority of customers, and thus sales, in the home market are not delivered by Ta Chen to the customer. Additionally, the amount of work needed to deliver merchandise to the U.S. customers, such as paperwork processing and arranging for the international freight, appears to be greater than the work necessary to deliver merchandise in the home market.

Based on the evidence on the record, our analysis of the freight and delivery selling activities indicates that freight and delivery selling activities are of a lower intensity in the home market compared to the U.S. market.

Inventory Maintenance

Ta Chen originally reported the intensity of inventory maintenance as "high" for the home market LOT, and "N/A" for the CEP LOT. See Ta Chen's Revised Selling Activities Chart. Ta Chen argues that Petitioners' brief mischaracterizes the record with respect to this issue, and that "only on rare occasions" does Ta Chen sell fittings from inventory to TCI. See Ta Chen's Rebuttal Brief at 28. Additionally, Ta Chen reiterates that it "supplies home market sales on a just-in-time basis but generally does not do so for U.S. sales." Ta Chen states that most of the sales to the United States are produced to order, not sold out of inventory. Id. at 28-29. However, Ta Chen admits that some sales to the United States are made out of inventory. See Ta Chen's CQR at C-46.

The Department found no evidence of just-in-time delivery arrangements in the home market. Such arrangements are generally guaranteed to deliver specific merchandise within a specific time frame to a customer. However, we did not find evidence of such guarantees. Rather, if a home market customer needs merchandise quickly, Ta Chen will check its inventory to see if it can provide the requested merchandise immediately. In fact, most sales in the home market are of merchandise produced to order as indicated in the Ta Chen Verification Report:

> We asked Mr. Kuo to describe the home market sales process. Mr. Kuo indicated that the home market and third-country market sales processes are very similar. Mr. Kuo indicated that home market customers usually contact Ta Chen

> Taiwan to inquire about purchasing certain merchandise using telephone, email, or fax. Upon receiving the initial inquiry from its home market customer, Ta Chen Taiwan's sales department will check with the production control department to see if the requested products are in stock at its warehouse and determine an estimated delivery or pick up time. If the requested merchandise is either not in Ta Chen Taiwan's current stock or if the sale is not urgent, Ta Chen Taiwan will schedule a time in its production line of fittings to have the merchandise manufactured. Once the logistics are organized, Ta Chen Taiwan will contact its home market customer and convey this information. If the information obtained is acceptable to the customer, Ta Chen Taiwan and the customer proceed with scheduling production and the sales process. We requested further clarification of how Ta Chen Taiwan determines whether to sell out of inventory versus scheduling a production order to meet its home market customers' requests. Mr. Kuo stated that if customers' requests are not urgent, they are generally produced to order. However, if an order is urgent, a customer will generally call Ta Chen Taiwan and ask if it has the specific merchandise in inventory before commencing the sale.

See Ta Chen Verification Report at 19-20.

With regard to its U.S. sales, in its CQR Ta Chen stated that its "shipments to TCI and TCI customers are not meant to be just-in-time." Rather, Ta Chen stated that it "usually ships to TCI or these customers several months after the order date, which reflects normal production schedules. In some cases, however, for production efficiency/convenience, Ta Chen Taiwan's shipments to TCI are taken from its Taiwan inventory." See Ta Chen's CQR at C-46.

Based on the evidence on the record, it appears that sales in both the home and U.S. markets are generally produced to order, but sometimes are made from existing inventory. We find no evidence to indicate that the level of intensity of the selling activity of inventory maintenance is different for either market. Therefore, we determine that the intensity of the inventory maintenance selling activity is the same for home market and CEP LOTs.

Risk of Non-Payment

We do not have evidence on the record to determine whether or not the risk of non-payment in the home market is "medium" as identified by Ta Chen. See Ta Chen's Revised Selling Activities Chart. Ta Chen describes this selling function as "Allowing customes (*sic*) to pay within a specified period of time from sale; activities related to monitoring payment." Ta Chen has not demonstrated the extent to which such a risk exists for its home market customers. However, there is no evidence on the record to indicate that the designation of the intensity of the selling function is not "medium." There is no basis for concluding that a risk of non-payment by TCI exists. Therefore, we cannot determine whether the intensity of the selling activity related to the risk of non-payment in the home market, as reported by Ta Chen, is inaccurate.

Customer Complaints

Ta Chen indicates that customer contact in the home market is of "low" intensity, but indicates that there is none between TCI and Ta Chen with respect to complaints or problems with merchandise. However, at verification, the Department found that TCI does contact Ta Chen concerning such problems.

> We asked what normally happens when TCI or TCI's customers have a problem with the merchandise supplied by Ta Chen Taiwan. Company officials stated that TCI will normally contact Ta Chen Taiwan, and the companies will agree upon an allowance or credit for TCI to account for the faulty merchandise. . . . The company noted that the normal review process for such quality issues involves TCI transmitting pictures of the fittings back to Ta Chen Taiwan, and, in some instances, actually shipping fittings back to the Tainan facility for further analysis. The company stated that, for returns involving U.S. sales (whether the fittings are sent to Tainan or not), the company acknowledged that it is TCI that contacts Ta Chen Taiwan to pursue such issues, not TCI's customers. The company stated that TCI staff typically contact Ta Chen Taiwan staff, so that Ta Chen Taiwan could identify the nature of the problem, determine if Ta Chen Taiwan is liable, and, if necessary, reimburse TCI.

See Ta Chen Verification Report at 40. Therefore, based on the evidence on the record, we determine that the intensity for the customer contact selling activity is "low" for both markets.

Ta Chen states that it is erroneous to equate customer complaints with returns. See Ta Chen Rebuttal Brief at 31. We agree, and believe that such returns are better addressed in the "Technical Assistance" or "After-Sales Services" sections below. In general, returns occur only after a complaint is lodged. However, a company may address a complaint in a different way, such as issuing a credit note or shipping new merchandise. Thus, it is inappropriate to equate returns with the intensity of providing the sales activity of customer complaints.

Payment Processing

Ta Chen argues that while it must process payment in the form of checks and often for individual sales from unaffiliated customers in the home market, it receives payment from its affiliate TCI through wire transfer. While we believe that the receipt of payment from TCI requires some activity on the part of Ta Chen, we nevertheless agree that evidence on the record indicates that the payment processing sales activity is at a higher intensity for home market sales than for U.S. sales to TCI.

Market Research

During verification, Ta Chen stated that its sales focus was on export sales, and not on

domestic sales. Particularly, when asked if Ta Chen would consider making small volume sales to its home market customers, Ta Chen stated "that typically potential customers would call Ta Chen Taiwan first to inquire about small volume sales." If the customer requested a sale involving small volume, Ta Chen Taiwan might suggest that the customer look elsewhere to buy its fittings. Ta Chen reiterated that Ta Chen Taiwan focuses primarily on its export markets, and building business amongst smaller domestic customers that are looking to purchase only a few fittings at a time is not typically pursued." See Ta Chen Verification Report at 19. Additionally, the Department agrees with Petitioners that the involvement of Ta Chen's president in examining business trends constitutes at least a minimal amount of selling activity in the United States with respect to market research. See Petitioners' Brief at 39. Based on the evidence on the record, the Department determines that the intensity of the selling activity related to market research is "low" for both the home market and CEP LOTs.

Research and Development

Ta Chen stated in its rebuttal brief that there were no R&D activities in this review period, and that as a result "this activity is moot for purposes of the Department's LOT analysis in this review." See Ta Chen Rebuttal Brief at 37. There is no evidence on the record of any R&D activity during the POR. Therefore we cannot make a comparison between markets regarding this selling activity.

Technical Assistance

We agree with Ta Chen that the "classification of the function's expenses is irrelevant for purposes of identifying and comparing selling activities between relevant markets." See Ta Chen Rebuttal Brief at 38. However, the question is whether Ta Chen performed such selling activities. Ta Chen points to the Ta Chen Verification Report, which states that "current testing is performed if customers request it" as evidence of the provision by Ta Chen of technical assistance. Id. at 39. However, no distinction is made as to whether or not such testing is confined to home market sales. The Department found no evidence of technical assistance provided in any market by Ta Chen. In fact, due to the relatively low-tech nature of the product, such assistance is unlikely to be necessary. "The company indicated that everyone in the business understands these products, and they can tell from the brochure what products Ta Chen Taiwan sells even if they cannot understand English. The company noted that a simple brochure that identifies the types and sizes is a sufficient description for its customers." See Ta Chen Verification Report at 30. Therefore, based on evidence on the record, the Department determines that the intensity of technical assistance for both markets is either "low" or "none."

Packing/Loading

Ta Chen stated in its rebuttal brief that, given the evidence on the record, the level of intensity for this selling activity for U.S. sales to TCI is not "N/A" but instead is "high." Ta Chen stated that "{g}iven that Ta Chen Taiwan ships fittings to TCI internationally via ocean carrier, Ta Chen Taiwan must perform packing/loading functions for its sales to TCI. As a

result, the packing/loading activity designation for the CEP LOT is "high." See Ta Chen Rebuttal Brief at 40. Contrary to Ta Chen's assertion, evidence on the record indicates that Ta Chen performs a similar level of intensity for this selling activity with respect to home market sales. See Ta Chen Verification Report at 36-37 (indicating that fittings are packed in similar boxes for different destinations) and at 31 (indicating packing weights for sales involving both TCI and Ta Chen). Based on this evidence on the record, the Department determines that the intensity for this selling function is identical in both the home and CEP markets.

After-Sales Services

Ta Chen classified after-sales services as post-sale activities such as price adjustments, issuance of credit memos, and providing documentation requested by customers. See Ta Chen Rebuttal Brief at 42. Additionally, the acceptance of returned merchandise falls into this category. The Department found that thousands of "pieces had been returned by TCI" to Ta Chen, though it was likely that these were returned outside of the POR. See Ta Chen Verification Report at 45. We have already noted that customer complaints, an after-sale service, occur between TCI and Ta Chen. See the "Customer Complaints" section above and Ta Chen Verification Report at 40. Clearly, Ta Chen also issued credit notes. Therefore, based on the evidence on the record, it appears that the intensity of this selling activity for both markets is the same, and is "medium."

Travel and Entertainment

Ta Chen stated that "the little traveling and entertainment in support of sales to TCI are not for fittings." See Ta Chen's June 20, 2008, letter at 32. The fact that Ta Chen admits that there is any travel and entertaining in support of sales to TCI at all undermines Ta Chen's claims in its rebuttal brief that such travel and entertainment is unnecessary because TCI is a wholly-owned affiliate. See Ta Chen Rebuttal Brief at 42-43. Furthermore, Ta Chen stated that its president, Mr. Robert Shieh, "travels for a variety of reasons that may or may not pertain specifically to fittings." See Ta Chen Verification Report at 47.

Evidence on the record suggests that Ta Chen may perform some level of this selling activity for sales to TCI. Therefore, we believe it is unreasonable to state with certainty that the intensity of this selling activity for the CEP LOT is "N/A, or not applicable" as Ta Chen suggests. Therefore, the Department determines that there is a 'low' level of travel and entertainment in support of Ta Chen's sales to TCI.

The Four Selling Function Categories

As stated above, the Department analyzes selling activities in four categories: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. For the first category, the sales process and marketing support includes the following selling activities: customer contact, order acceptance, risk of non-payment, payment processing, market research, and travel and entertainment. The freight

and delivery category includes packing and loading as well as freight and delivery. The inventory maintenance category stands alone, while the warranty and technical services category includes customer complaints, technical assistance, and after-sale services.

For the sales process category, we find that two of the selling activities reported by Ta Chen are of identical intensity (order acceptance and market research), two may have a higher intensity in the home market (risk of non-payment and payment processing), one may be slightly less intense in the U.S. market (customer contact), and we are unable to compare the intensity of travel and entertainment but believe that evidence on the record may indicate some of this selling activity occurs for U.S. sales.

Based on the evidence on the record, we determine that the selling activities in the sales process category are, on the whole, equal in both the home market LOT and CEP LOT.

For the freight and delivery category, we find that the level of intensity of the packing and loading selling activities is the same for home market sales and sales to TCI, and the freight and delivery selling activities are more intense for U.S. sales to TCI. Based on the evidence on the record, the selling activities in this category are more intense in the CEP LOT than the home market LOT.

For the inventory maintenance and warranty and technical service categories, we find that the intensity of the selling functions is the same. Therefore, based on the evidence on the record, the selling activities in these categories are the same for both LOTs.

In summary, based on the Department's thorough examination of the claimed selling activity, we believe that the home market LOT is not at a more advanced stage than the CEP LOT. Therefore, we are not granting a CEP offset to Ta Chen's NV.

Comment 4: Identification of Manufacturer

Ta Chen argues that the Department's application of facts available ("FA") in the Preliminary Results to its sales of fittings purchased outright from other manufacturers is unjustified. Ta Chen requests that the Department reverse its application of facts available because Ta Chen claims it is unable to link specific sales observations to precise manufacturers. Additionally, Ta Chen states that the manufacturer identity is irrelevant to the dumping review. Ta Chen lays out its argument with the following eight points: 1) Ta Chen's inability to identify the supplier of purchased or tolled fittings; 2) the Department's findings regarding Ta Chen's manufacturers have no factual basis; 3) Ta Chen's ability to distinguish between purchased and tolled fittings; 4) the Department's findings ignore precedent; 5) identification of subcontractors is irrelevant; 6) the Department did not give Ta Chen an opportunity to identify the manufacturer of purchased fittings; 7) identification of the manufacturer of purchased fittings is overly burdensome; and 8) the Department should not apply FA to purchased fittings identified by only one manufacturer. Each point raised by Ta Chen is discussed in detail below.

Ta Chen's inability to identify the supplier of purchased or tolled fittings

Ta Chen states that it is unable to identify the manufacturer of each tolled and purchased fitting sold because in the normal course of business Ta Chen does not distinguish its fittings based on manufacturer identity. Ta Chen indicates that in the normal course of business it produces some types of fittings at its own plant. However, Ta Chen notes that in the normal course of business it also purchases finished fittings from unaffiliated suppliers and has some fittings toll processed by unaffiliated subcontractors. Ta Chen contends that, throughout the course of the review and during the Department's verifications of Ta Chen, it has explained that, upon arrival, Ta Chen inspects toll processed and purchased fittings at its facility in Tainan, Taiwan, for quality and then places them in inventory. Ta Chen explains that after the fittings are accepted in terms of quality and actually placed into its inventory, the manufacturer identity becomes lost. Ta Chen adds that all merchandise received from its toll processors or suppliers is stamped "Ta Chen" before entering inventory. Ta Chen states that more than one supplier produces each type of tolled or purchased fitting; therefore, manufacturer identification is not possible based solely upon product characteristics. Finally, Ta Chen argues that given the size of its inventory, the length of time that fittings remain in inventory, and the "Ta Chen" marking on each fitting, it is simply impossible, overly burdensome, and lacks business sense for Ta Chen to identify the manufacturer of each tolled or purchased fitting once it enters inventory. Ta Chen argues that no record evidence undermines the validity of its explanation that it cannot identify the specific manufacturers' fittings that are purchased or toll processed. See Ta Chen's Brief at 5-7.

The Department's findings regarding Ta Chen's manufacturers

Ta Chen argues that the Department's findings that Ta Chen can identify certain manufacturers based upon its cost accounting system is not supported by the Department's analysis memorandum accompanying the Preliminary Results and, therefore, not in accordance with law. Ta Chen insists that Department has no legal basis for requiring Ta Chen to change its business practices in order to identify the manufacturer of each sale, because manufacturer identity is unnecessary for its sales of fittings.

Ta Chen insists that the Department's Preliminary Results affirm that Ta Chen is unable to identify the specific supplier of each tolled or purchased fitting because all tolled and purchased fittings are commingled into inventory. See Preliminary Results at 73 FR 38977. However, Ta Chen states that the Department's language incorrectly implies that Ta Chen is able to identify specific suppliers of fittings through its cost accounting records because the records contain unique codes identifying the manufacturer. Ta Chen states that its cost accounting system is based on a standard cost plus variance, and not on the actual cost of a specific sale. Ta Chen reiterates that although Ta Chen knows the supplier of fittings upon receipt, once entered into inventory the fittings are comingled and lack distinguishing characteristics that would identify the specific manufacturer. In addition, Ta Chen notes that in past reviews the Department has known and accepted that Ta Chen cannot link its home market sales to specific manufacturers that supplied Ta Chen with subject merchandise, and has not

asked or suggested that Ta Chen change its business practices in that regard. Ta Chen states that it is being unfairly penalized although its business practices have not changed from past reviews to the current review. See Ta Chen's Brief at 7-15.

Ta Chen's ability to distinguish between purchased and tolled fittings

Ta Chen insists that the Department's finding at the Preliminary Results that it was unable to distinguish between purchased and tolled fittings is factually inaccurate, and should not be used as the basis for applying FA to its purchased fittings. Ta Chen claims that it is able to distinguish fittings that were tolled from those that were purchased based on the physical characteristics of the fittings. Ta Chen explains that the type of fittings purchased from manufacturers generally do not overlap with those provided by toll processors. Therefore, Ta Chen continues, it can identify whether a fitting has been purchased or tolled based upon product characteristics even after the fitting enters its inventory.

Ta Chen claims that it informed the Department that it could distinguish tolled fittings from purchased ones, and refers to its sections B and C questionnaire responses at B-31 and C-54, dated September 24, 2007, which state that Ta Chen identified itself as the manufacturer of fittings that were tolled. Ta Chen also points out that the Department is aware that the cost database demonstrates that Ta Chen was able to segregate between purchased and tolled fittings based on product characteristics. Ta Chen insists that, despite inadvertently stating that it identified itself as the manufacturer of tolled fittings, the fact that it identified the subcontractors (in its sales databases) shows that Ta Chen can distinguish between tolled and purchased fittings.

Ta Chen insists that the Ta Chen Verification Report stating that Ta Chen officials repeated several times that they could not demonstrate which specific sales observations involve merchandise that was toll processed or supplied was potentially a misunderstanding given the evidence that demonstrates Ta Chen is able to do so and did so in its sales response. Ta Chen states that if it did make the above statement, it was an inadvertent error and apologizes for any confusion it may have caused. Ta Chen further explains that it was perhaps trying to explain that it is impossible to distinguish between purchased and tolled fittings solely by the manufacturer field without considering the product characteristics.

Case Precedent

Ta Chen states that the Department's application of FA to its sales of purchased fittings abruptly departs from its determination in the original investigation, and subsequent administrative reviews. Ta Chen explains that the Department has never objected to Ta Chen's inability to identify the specific supplier, much less apply FA. Ta Chen specifically points to the Department's 2003-2004 administrative review of this order, in which the Department found that Ta Chen could not identify the supplier of subcontracted and purchased fittings, and did not apply FA. Ta Chen states that the facts of the current review regarding its inability to identify specific manufacturers of SSBPWFs have not changed from the previous review. In addition,

Ta Chen argues that the Department's cite to section 771(16) of the Act to support the proposition that the Department must calculate its antidumping duty margin by matching sales according to manufacturer ignores long-standing Departmental practice of treating the respondent as the supplier of subject merchandise purchased from unrelated suppliers where the destination of the merchandise was unknown to those unrelated suppliers.[10] Ta Chen also states that the Department took this approach in the 1998-1999 review.[11]

Thus, Ta Chen states that, where the supplier, at the time of sale, is unaware of a particular fitting's destination (e.g., the home market, U.S. market, or third country market) once Ta Chen sells the fitting, as in this case, application of Ta Chen's dumping margin on such fittings conforms to long-standing, established Commerce practice. Also, Ta Chen contends that an agency may only depart from a long-standing practice where justified by the facts of the case or where it provides a well-reasoned basis for doing so, and states that neither condition is met in this case.

Irrelevance of Subcontractors

Ta Chen claims that it fails to understand the relevance of its mis-reporting of the manufacturers of toll produced fittings to its purchased fittings. Rather, Ta Chen argues that the Department's finding is irrelevant and should not be the basis of applying FA to its purchased fittings because Ta Chen's error relates to tolled fittings. Ta Chen claims its identification of manufacturers of tolled fittings does not undermine the integrity of its submitted sales and cost data. Ta Chen also contends that it is reporting the manufacturer of tolled fittings in exactly the same way as it has in all prior reviews and the original investigation, and that in each of those segments, the Department found Ta Chen's identification of the subcontractor acceptable for purposes of calculating the dumping margin.

Lack of opportunity to identify the manufacturer of purchased fittings

Ta Chen argues that if the Department truly believes that Ta Chen is able to identify the manufacturer of purchased fittings then it should have given Ta Chen the opportunity to amend its sales database to provide such information. Ta Chen states that the Department's lack of opportunity to allow Ta Chen to amend its database, and instead applying FA was not justifiable. Ta Chen states that under 19 U.S.C. § 1677m(d) the Department has a statutory obligation to provide respondents a chance to remedy deficient submissions before applying

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[10] Ta Chen cites: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 63 FR 32833 (June 16, 1998) ("Pipe from Korea"), and accompanying Issues and Decision Memorandum at Comment 8; Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66471 (December 17, 1996) ("Antifriction Bearings from France, et al."), and accompanying Issues and Decision Memorandum at 4G, Comment 1.

[11] Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Intent To Not Revoke in Part, 65 FR 41629, 41630 (July 6, 2000).

FA. See Ta Chen's Brief at 25-26. Ta Chen claims that it was not aware of the Department's conclusion that Ta Chen was able to identify the manufacturer until the Preliminary Results. Ta Chen further states that as the Department's position at the Preliminary Results is contrary to its long-standing approach, the opportunity for Ta Chen to address the Department's concern before applying FA is even more important. Id.

Identification of the manufacturer of purchased fittings is overly burdensome

Ta Chen asserts, arguendo, that even if it could identify the specific manufacturer of a particular fitting for each sale it would be overly burdensome and time consuming for Ta Chen to do so due to the large number of U.S. sales observations. Ta Chen states that in previous cases, the Department has refrained from imposing overly burdensome requirements on respondents. See Ta Chen's Brief at 27-29. Therefore, Ta Chen requests that the Department reject Petitioners' pleas for the Department to require Ta Chen to report each manufacturer for each of its sales observations.

Department's Application of FA

Ta Chen states that the Department should not apply FA to purchased fittings identified by only one manufacturer. Ta Chen notes that although some of its observations report two companies as potential manufacturers, the remaining sales observations have one specific manufacturer reported. Therefore, Ta Chen's requests the Department not apply FA to sales observations that report only one manufacturer.

Ta Chen states that the application of adverse facts available ("AFA"), in total or in part, advocated by Petitioners is not warranted, and that the Department should find in its final results that Ta Chen cooperated to the best of its ability at each stage of the review. Ta Chen argues that Petitioners' request to apply AFA due to its failure to report necessary information in the form and manner requested, as required under 19 U.S.C. § 1677e(a), and 19 U.S.C. § 1677e(b) incorrectly interprets the statute. Ta Chen insists that contrary to Petitioners' suggestion, it has put forth its maximum effort in this segment of the proceeding to accommodate the Department beyond any reasonable expectation. In addition, Ta Chen argues that in the Preliminary Results at 73 FR 38975, the Department inconsistently uses the terms "FA" and "AFA," and therefore Ta Chen is unable to distinguish which application the company is truly receiving. Ta Chen requests that should the Department decide to disregard its argument regarding its inability to identify the manufacturer of purchased fittings, it should continue to apply "neutral" FA, as opposed to AFA. See Ta Chen's Brief at 48-51.

In rebuttal, Petitioners contend that, for purposes of the final results, the Department should continue to apply facts available to the fittings purchased by Ta Chen due to its failure to trace sales from inventory. Petitioners note that during the POR Ta Chen sold fittings some of which it (a) produced itself, (b) purchased outright from other manufacturers in Taiwan, and (c) arranged to have produced by tollers or subcontractors in Taiwan from raw materials supplied by Ta Chen.

Petitioners request that the Department take into account their allegations that other Taiwanese producers are circumventing this order by selling their fittings through Ta Chen. See Petitioners' Rebuttal Brief at 1-6. In particular, Petitioners assert that, as recounted by the International Trade Commission ("ITC"), throughout the life of this order all Taiwanese producers and exporters other than Ta Chen have been generally subject to the all-other's dumping margin. See Stainless Steel Butt-Weld Pipe Fittings From Japan, Korea, and Taiwan, Invs. Nos. 731-TA-376, 563, and 564 (Second Review), USITC Pub. 3801 at I-7 (September 2005). Therefore, Petitioners surmise that other Taiwanese producers and exporters have sold fittings to unaffiliated customers in the U.S. market through Ta Chen, rather than directly, in order to benefit from Ta Chen's substantially lower rate. Petitioners argue that this arrangement has meant (a) considerably less antidumping duties being assessed and collected, and (b) diminished effectiveness of the antidumping order for Petitioners, than if the other companies in Taiwan had been exporting their fittings from Taiwan directly to the United States at their own dumping margins. Petitioners note that this form of circumvention is similar to the circumstances in Jia Farn Mfg. v. Secretary of Dept. of Commerce, 817 F. Supp. 969 (CIT 1993), where a company revoked from the order on sweaters wholly or in chief made of man-made fiber from Taiwan, Jia Farn, served as the conduit for sweaters that were actually produced by other Taiwanese companies that remained under that order. Although Ta Chen remains subject to the order under the instant review, Petitioners argue that Ta Chen consequently has relied upon other means to channel through itself other Taiwanese producers' fittings sold in the United States, thereby reducing these other producers' dumping liabilities.

Petitioners contend that Ta Chen's claim that the companies that toll process and supply it with fittings have no knowledge of Ta Chen's final customer or destination for the fittings is critical to Ta Chen's ability to bring the other Taiwanese companies' fittings into the United States at Ta Chen's dumping rate rather than at the other Taiwanese companies' much higher dumping rates. Petitioners note that the Department calculates dumping margins for products of the respondent that first knows or has reason to know the merchandise is to be exported to the United States for sale to unaffiliated buyers.[12]

Petitioners state that contrary to Ta Chen's claim, the record in this administrative review is replete with indications that Ta Chen's manufacturers have collaborated with Ta Chen

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[12] Petitioners note that the Department recently has revoked 19 C.F.R. § 351.401(h) (2007) and reserved that section of its regulations pending a rulemaking proceeding. See Import Administration, Withdrawal of Regulations Governing the Treatment of Subcontractors ("Tolling Operations"), 73 FR 16517 (March 28, 2008) ("Treatment of Subcontractors"); and 19 C.F.R. § 351.401(h) (2008). In its interim final rule, the Department explained that it was taking this action in light of a decision by the U.S. Court of International Trade (USEC Inc. v. United States, 281 F. Supp. 2d 1334 (2003), aff'd on other grounds, Eurodif v. United States, 411 F.3d 1355, 1364 (Fed. Cir. 2005)), which the Department observed has had ". . . the unintended effect of bestowing the status of 'foreign manufacturer' or 'producer' upon parties in the United States that otherwise would have assumed the status of purchasers of subject merchandise." This matter is pending before the U.S. Supreme Court in United States v. Eurodif S.A., No. 07-1059.

to avoid antidumping duties. Petitioners insist that Ta Chen and its manufacturers were interdependent during the POR, and therefore, the Department should treat them as affiliates through a close-supplier relationship, and should have had them report their sales transactions on that basis.

Petitioners request that if the Department finds that Ta Chen and each of the other Taiwanese producers were acting at arm's-length from one another, then the sales presented by Ta Chen to the Department as "purchased" or "tolled" should be considered by the Department as the sales of those other Taiwanese companies. Accordingly, Petitioners contend that the Department apply the other companies' dumping rates to these sales on the basis that these Taiwanese companies either knew or had reason to know at the time of sale that the fittings they "sold" to Ta Chen or "tolled" with Ta Chen were destined for the U.S. market. With respect to the "tolled" sales claimed by Ta Chen, Petitioners argue that the other Taiwanese producers, which actually converted pipe into the subject fittings, and not Ta Chen, should be treated by the Department as the producers of those stainless fittings pursuant to the Department's recent notice, Treatment of Subcontractors, 73 FR at 16517, where the Department has returned to case-by-case adjudication of tolling issues in order to ensure the proper and efficient operation of the antidumping law and to provide the relief intended by Congress.

Based on the foregoing arguments, Petitioners request that the Department apply separate dumping margins to those companies that Ta Chen reported as unaffiliated manufacturers in its databases, regardless of whether the fittings were purchased or toll-processed. Petitioners suggest that in instances when Ta Chen reports two potential manufacturers and states that it is unable to determine which of the two manufactures actually produced the fitting that the Department apply the dumping margin of the highest potential manufacturer or a straight average of the two manufacturers' own dumping margins.

With respect to Ta Chen's argument that it cannot identify the manufacturers of fittings that were either toll-processed or supplied to Ta Chen during the POR, Petitioners contend it is in the interests of Ta Chen and its tollers and suppliers to not provide this information given the substantial dumping margins of Ta Chen's tollers and suppliers. Contrary to Ta Chen's claims otherwise, Petitioners contend that the Department has a legal basis to require a company to modify its recordkeeping procedures. In support of this contention, Petitioners note that the statute mandates that a respondent do the maximum it can in responding to the Department's requests for information. Citing, e.g., Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003) and NSK, Ltd. v. United States, 481 F.3d 1355, 1361 (Fed. Cir. 2007). In the instant review, Petitioners argue that Ta Chen's failure to distinguish between sales of fittings it produced itself and fittings tolled or produced by other Taiwanese companies constitutes inadequate recordkeeping and should not be accepted by the Department. Petitioners note that, by its own admission, Ta Chen could "… alter its business practices to enable it to distinguish manufacturers …." Citing Ta Chen's Brief at 14. Therefore, by refusing to do so, Petitioners assert that Ta Chen clearly has not made its maximum effort to cooperate with the Department's requests for the information. Further to this point, Petitioners claim that tracking the producer of tolled or supplied fittings provides very real commercial utility and importance, for purposes of resolving matters of product liability as well as ensuring that a fitting meets specifications.

Citing Petitioners' March 24, 2008, letter affidavit (re-filed on April 1, 2008). See Petitioners' Rebuttal Brief at 7.

During the course of this administrative review, Petitioners note that the Department has twice requested that Ta Chen identify the producer of all its sales. See Petitioners' Rebuttal Brief at 8. Petitioners argue that Ta Chen was under an obligation to provide the data requested by the Department and make its legal arguments later. Citing Ta Chen Stainless Steel Pipe, Ltd. v. United States, 25 CIT 1349, 1354 (2001).

Petitioners rebut Ta Chen's assertion that it is being unfairly penalized for reporting its sales as it always has in past reviews, i.e., without specificity as to which merchandise was tolled or supplied and by whom. Petitioners argue Ta Chen's refusal to identify the supplier for each sale unfairly penalizes Petitioners by effectively allowing other Taiwanese producers of subject fittings to enter the United States at Ta Chen's much lower dumping rate, rather than the rate assigned to the companies that actually manufactured the fittings sold by Ta Chen.

Petitioners point out that agencies frequently modify their positions on issues when there is good cause. Citing Treatment of Subcontractors, 73 FR at 16517. In the instant review, Petitioners claim that there is good cause for the Department to reject Ta Chen's refusal to identify each tolled or purchased fitting and the respective manufacturer. In support of their claim, Petitioners provide an analysis of Ta Chen's home and U.S. market sales by quantity of sales observations and volume that were manufactured by companies other than Ta Chen. See Petitioners' Rebuttal Brief at 9-10. Based upon their analysis of these data, Petitioners argue that the volumes of tolled and purchased fittings are sufficiently and comparatively large enough to merit reliance upon facts available (at least as to the purchased fittings) as the Department has done in its Preliminary Results. See Petitioners' Rebuttal Brief at 10-11. Petitioners note that the Department's facts available methodology with respect to this issue was not unreasonable. However, Petitioners submit that the totality of the circumstances merits broader application of facts available and an adverse inference when Ta Chen's inadequate reporting precludes tracing a given sale to its manufacturer.

Petitioners stress that Ta Chen attempts to minimize the importance of the work undertaken by its subcontractors, and that in this segment of the proceeding, the relative proportion of goods made in whole or in the main by third parties for Ta Chen is so significant that the term, "tolling," is not substantively apt. Petitioners note that this conclusion is reinforced when contrasted with Ta Chen's treatment of fittings as tolled when a third party simply provided heat treatment, "…because heat treatment is a relatively minor process." See Petitioners' Rebuttal Brief at 11-12, citing Ta Chen Verification Report at 27.

Petitioners rebut Ta Chen's claims that a review of its internal practices makes it easily apparent that the identity of the supplier is lost once the tolled or purchased fitting is commingled into inventory. Petitioners argue that Ta Chen purposefully has eliminated traceability, and could have had each of its fittings stamped with a code designating in-house production by Ta Chen or production wholly or in main part by third parties, including which party. Petitioners point to the Ta Chen Verification Report at 22 (footnote 58) in which the

Department found that some fittings were not marked "Ta Chen" but were stamped with a name unrelated to Ta Chen or its toller or supplier. See Petitioners' Rebuttal Brief at 12-13.

Contrary to Ta Chen's assertion otherwise, Petitioners contend that the Department's findings at the Preliminary Results (i.e., Ta Chen could segregate toll-produced and purchased material) are factually based and supported by substantial evidence and in accordance with law. Petitioners argue that the assertions by Ta Chen are based on its choice not to keep track of each fitting's origin by blindly and incorrectly stamping other Taiwanese manufacturers' goods as if they were Ta Chen's own. Petitioners state that the Department's observations at verification correctly record that Ta Chen was in total control over how each and every fitting could be identified and traced, but opted to lose track of such information for purposes of its sales data. Petitioners reiterate that Ta Chen admits "in principle, that Ta Chen could alter its business practices to enable it to distinguish manufacturers from the time it receives the fittings until the fittings are sold, solely for purposes of the Department's antidumping questionnaire." Citing Ta Chen's Brief at 14. Petitioners stress that under these circumstances, whereby Ta Chen as an experienced respondent chose to sell and resell such substantial amounts of other manufacturers' output it not only could have, but should have altered its practice in this regard. See Petitioners' Rebuttal Brief at 14.

Petitioners state that under 19 U.S.C. § 1677b(f)(1)(A), and as implemented by the Department's regulations, Ta Chen has a statutory obligation to report data that "… reasonably reflect the costs associated with the production and sale of the merchandise." Petitioners stress that by deliberately obscuring the true manufacturing source, Ta Chen has complicated and compromised the ability of the Department reasonably to identify the costs associated with the production and sale of the purchased and tolled fittings.

Petitioners argue that Ta Chen's claim that it had informed the Department that it could distinguish between purchased and tolled fittings, Petitioners argue that this claim is disingenuous (citing Ta Chen's Brief at 16). In particular, Petitioners note that Ta Chen's initial claim in its questionnaire responses to have identified itself as the manufacturer of tolled fittings was contradicted by the Department's findings at verification. Petitioners claim that only by first inverting Ta Chen's misstatements could one begin to identify which products were either completely manufactured by other manufacturers or tolled. Petitioners further note that Ta Chen continues to attempt to clarify its error by stating that one would next need to parse that combined subset by product characteristics and manually compare those parsed subsets against Ta Chen's in-house claimed production specifications. However, Petitioners assert that even then one would not have a complete identification because the product specifications among manufacturing sources are not mutually exclusive. Petitioners state that Ta Chen attempts to skirt this issue by stating that there is "virtually" no overlap between tolled and purchased fittings based on physical characteristics. See Ta Chen Verification Report at 16-17.

Even with Ta Chen's failure to trace the purchased and tolled fittings completely in the normal course of business, Petitioners aver that Ta Chen could have provided in its sales databases an indicator of whether a product was produced entirely in-house, manufactured entirely by an outside producer, or manufactured from Ta Chen-supplied pipe into fittings by an

outside toll producer. Petitioners reiterate points noted above regarding Ta Chen's lack of response to the Department's requests for this information and its decision to employ a stamping process that guaranteed that it could not identify which particular outside supplier provided which wholly manufactured or partly manufactured fitting. See Petitioners' Rebuttal Brief at 15-16.

Based on the foregoing, Petitioners state that the Department is warranted in its departure from past precedent, i.e., determinations in prior segments of this proceeding to accept Ta Chen's reporting. Petitioners state that a change in methodology is warranted when the Department is confronted with new facts that put in question the completeness and accuracy of the information provided by Ta Chen. See Petitioners' Rebuttal Brief at 16-19.

Petitioners' last point is that the identification of Ta Chen's subcontractors and outside manufacturers is relevant for the Department to make a complete and accurate finding. Petitioners claim that Ta Chen's low dumping margins have been an incentive to other Taiwanese producers of subject merchandise to make this review's inclusion of their products a "substantial" part of Ta Chen's total fittings and sell collaboratively under the mantle of Ta Chen's name. Petitioners believe that no transaction by Ta Chen with these companies can truly be at arm's-length prices. See Petitioners' Rebuttal Brief at 19-22.

Department's Position:

The Department continues to treat toll produced merchandise as being produced by Ta Chen and continues to calculate margins based on the information provided. In addition, the Department also continues to apply facts available to those sales of merchandise produced by other manufacturers not specifically identified by Ta Chen.

Concerning the Department's determinations in previous reviews, the Department notes that determinations in one administrative review are not binding in subsequent reviews. See, e.g., Fresh Garlic and accompanying Issues and Decision Memorandum at Comment 3. The Department notes that, in contrast to more recent reviews under this order, the Department conducted verification of both Ta Chen and Liang Feng Stainless Steel Co., Ltd. in Taiwan, and TCI in the United States. The Department obtained information throughout this proceeding, now on the record, which the Department believes is sufficient to deviate from previous practices where the facts on the record indicate it is prudent to do so. As the Department noted in a previous review, it is the Department's practice to restrict the matching of products to identical products purchased by Ta Chen from the same unaffiliated producer and resold in the home market in cases where the unaffiliated producer is identified with certainty. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 70 FR 39735 at 39741 (July 11, 2005) (unchanged in final results, Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 70 FR 73727 (December 13, 2005)). The record of this review shows that Ta Chen does know with certainty the producer of the purchased fittings at the time they are acquired but does not retain that information in the normal course of business and cannot

provide it to the Department. Moreover, as explained below, the Department has determined, based on the record of this review, that it can reasonably segregate purchased fittings produced by third parties from toll produced merchandise that is properly treated as produced by Ta Chen. Under these circumstances, we do not consider it is appropriate to allow purchased fittings known with certainty not to be produced by Ta Chen to be treated for matching purposes as though they were all produced by Ta Chen, where § 771(16) of the Act requires that foreign like product be produced by the same person as the subject merchandise to which it is compared.

In its questionnaire responses, Ta Chen stated that it reported itself (i.e., Ta Chen) as the manufacturer for sales observations that it produced or that were toll processed. In instances where the sale was made of fittings purchased from a supplier, Ta Chen stated that it reported the supplier as the manufacturer in its sales databases. However, in its March 14, 2008, letter, Ta Chen indicated that it was unable to distinguish between manufacturers for fittings purchased from various suppliers. Additionally, during verification the Department found that Ta Chen had reported the other manufacturers' names in the manufacturing field for the sales database for all fittings that were purchased as well as toll processed. The Department also found that Ta Chen was apparently unable to distinguish between the manufacturers that toll process from those that supply certain types of subject fittings that Ta Chen re-sells, once the fittings that are toll-produced or purchased enter into Ta Chen's inventory system. See Ta Chen Verification Report at Section V, pages 24-25.

In the Preliminary Results, the Department determined that it could reasonably segregate those sales which were toll-produced on behalf of Ta Chen from those sales of merchandise which were purchased from unrelated manufacturers. Preliminary Results at 38978. Additionally, at verification, the Department found that Ta Chen had not reported toll-processed merchandise as being produced by Ta Chen, as it had previously indicated to the Department. See Ta Chen's section B-D response, September 24, 2007, at pages B-31 and C-53 and 54. Instead, Ta Chen had reported the toll-producer as the manufacturer, rather than Ta Chen. The Department also found that the toll-producers were the same companies from which Ta Chen also purchased fittings. See Ta Chen Verification Report at Section V, page 24.

Ta Chen argues that in previous segments of this proceeding, the Department has never objected to Ta Chen's inability to identify the supplier, nor has it applied facts available. However, the facts in this review differ from those in previous reviews because despite Ta Chen's claims to the contrary, the Department determined that it is possible to segregate reasonably purchased fittings from tolled fittings based on product characteristics.

Ta Chen is correct that in previous segments, the Department has accepted Ta Chen's inability to identify the supplier, as it did in the 1998-99 review. See Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan: Final Results of Antidumping Duty Administrative Review, 65 FR 81827 (December 27, 2000) and accompanying Issues and Decision Memorandum at Comment 6. In that review, the Department was "unable to distinguish from the database whether the sale was of subcontracted or purchased fittings." Id. Here, however, the Department is segregating purchased from tolled fittings, based on the fact that there is no

overlap in the cost database between CONNUMs that were produced by Ta Chen, toll-produced, or purchased. Therefore the Department has determined that the tolled fittings should be treated as Ta Chen sales, but the purchased fittings should not be included in the margin calculation. Because the Department is unable to identify the specific manufacturer of the fittings that Ta Chen purchased, it cannot match products from producers other than Ta Chen, and therefore it is assigning a neutral facts available margin to those sales.

With respect to merchandise toll produced by other manufacturers and sold by Ta Chen, we find that Petitioners' arguments are not persuasive with respect to the broader application of facts available. See Petitioners' Rebuttal Brief at 11, 17-19. Concerning the revocation of the regulation governing toll-produced merchandise, the Department agrees with petitioners that it is returning to a case-by-case review of information on the record of each proceeding.[13] However, the information on the record is not sufficient to change our determination in the Preliminary Results with respect to the treatment of merchandise that was toll produced. Petitioners' arguments regarding the assignment of rates to toll produced merchandise are based on the alleged closeness of Ta Chen and its suppliers/toll producers, the volume of sales by the toll producers/manufacturers to Ta Chen, the amount of pipe feedstock obtained by these manufacturers/toll producers from Ta Chen, and the knowledge that Ta Chen has been subject to antidumping duty reviews. However, Petitioners admit that there is a lack of information regarding the complete nature of the commercial activity between Ta Chen and its suppliers/toll producers. Id. at 19, 20. Because the Department has not found evidence of a close-supplier relationship between Ta Chen and the unaffiliated suppliers, and the Department has not found evidence that the unaffiliated toll producers had knowledge of the destination of the merchandise that was toll-produced, the Department will continue to denote the manufacturer of toll-produced merchandise as "Ta Chen" for the purposes of calculating Ta Chen's antidumping duty margin in this administrative review.

As to Petitioners' circumvention arguments and citation to Jia Farn, the Department does not find that the record supports a conclusion that Ta Chen is deliberately circumventing the order.

Concerning the application of facts available to Ta Chen's purchases of fittings in the home market, § 776(a)(1) of the Act indicates that the Department may apply facts otherwise available if the "necessary information is not available on the record." As stated above, it is the Department's practice to restrict the matching of products to identical products purchased by a firm under review from the same unaffiliated producer and resold in the home market in cases where the unaffiliated producer is identified with certainty. As Ta Chen has not provided information regarding the manufacturers of the purchased fittings sufficient to match the products by producer, the information necessary "is not available."[14]

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[13] See Treatment of Subcontractors .

[14] Citing Pipe from Korea and Antifriction Bearings from France, et al., Ta Chen argues that the Department has a long-standing practice of treating the respondent as the supplier of subject merchandise purchased from unrelated suppliers where the destination of the merchandise was unknown to those unrelated suppliers. The Department acknowledges that the information on the record indicates that the destination of the purchased fittings was

Ta Chen claims that the Department failed to provide Ta Chen with an opportunity to identify the manufacturer(s) of purchased fittings. See Ta Chen Brief at 25-26. Ta Chen specifically states that it was only after the issuance of the Preliminary Results, "without giving Ta Chen an opportunity to submit a revised database that Ta Chen become {sic} aware of the Department's belief that Ta Chen is able to identify the manufacturer." Id. at 26. According to Ta Chen, the Department's failure to afford Ta Chen an opportunity to remedy the alleged deficiency is contrary to law. The Department specifically requested that Ta Chen identify the manufacturer of purchased fittings in the original antidumping duty questionnaire, as detailed below. Ta Chen initially stated that it had, indeed, identified the individual manufacturers of the purchased fittings. Only later did Ta Chen change its response to state that it could not identify the manufacturer "once the fittings entered the inventory." Additionally, in its March 6, 2008, letter, the Department again afforded Ta Chen the opportunity to remedy the deficiency, which it did not do.

The Department twice asked Ta Chen to identify all of its sales by producer. Specifically, in the Department's original questionnaire of August 6, 2007 at A-1, the Department requested that Ta Chen complete a separate chart for the merchandise of each unaffiliated manufacturer whose merchandise was sold by Ta Chen during the POR. Ta Chen was also asked in the same questionnaire at B-4 to identify the manufacturer for each home market sale in the MFRH field. Specifically, the questionnaire states that respondents must "identify the manufacturer in each record by the use of a code" if the respondent has sold the foreign like product of more than one manufacturer. The questionnaire specifically states that "if you are not the manufacturer, report the manufacturer of the merchandise in your narrative response and provide a key to the code." See the Department's antidumping duty questionnaire of August 6, 2007, at B-25.

In its AQR, Ta Chen states that it "bought completed subject merchandise from third parties and re-sold it. In each of these cases, the third party was uninvolved with Ta Chen's sale of the subject merchandise to other third parties, and did not know to whom or what market Ta Chen sold the purchased fittings. Thus, again, per Department practice, the subject merchandise is included in Exhibit A-1 as Ta Chen's sales" (emphasis omitted). See Ta Chen's AQR at A-3. In its BQR, with respect to the MFRH field, Ta Chen stated that it "reports the third party

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unknown to the unrelated suppliers. Therefore we continue to treat Ta Chen as the respondent, rather than those suppliers. Consistent with its past practice, the Department is not calculating a separate margin for those suppliers in this review. The issue is the lack of information identifying the manufacturers of the fittings, so that the Department may match identical products by the same manufacturer in its antidumping duty calculations pursuant to Section 771(16). In any event, Pipe from Korea and Antifriction Bearings from France, et al. are not on point, because in those cases the respondent controlled both the production and sale of the "purchased" merchandise. In Pipe from Korea, the respondent further manufactured the purchased merchandise prior to sale, and in Antifriction Bearings from France, et al., the merchandise was produced by subcontractors. In this case, evidence on the record suggests that Ta Chen does not control production of the purchased fittings. Thus, treating those fittings as though they were produced by Ta Chen for matching purposes would not be appropriate.

supplier as the manufacturer for fittings that Ta Chen purchases and re-sells." See Ta Chen's BQR at B-31. Thus, it is clear that Ta Chen, in its BQR, claimed that it had identified the manufacturers of fittings that were purchased and re-sold by Ta Chen, consistent with the requirements stated in the questionnaire. After reviewing the databases submitted by Ta Chen, however, the Department could not determine if Ta Chen had in fact reported these manufacturers. The Department therefore issued a supplemental questionnaire requesting that Ta Chen clarify this discrepancy. See the Department's supplemental questionnaire of March 6, 2008. In Ta Chen's response of March 14, 2008, Ta Chen stated that it was unable to determine which company sold merchandise to Ta Chen. See Ta Chen's March 14, 2008, letter at 1. With conflicting information on the record, the Department at verification asked Ta Chen to clarify the issue. Ta Chen stated that "for the merchandise 'supplied' by these entities, when the fittings were supplied to Ta Chen Taiwan it knew which supplier had supplied the merchandise, but once the fittings entered into its inventory it could no longer distinguish the . . . merchandise." See Ta Chen Verification Report at 24.

Ta Chen is aware of the requirements under § 771(16) of the Act that defines "foreign like product" as merchandise produced in the same country by the same person. As the evidence on the record indicates, Ta Chen cannot reasonably claim that it was afforded no opportunity to identify the manufacturers of purchased fittings, or that it was unaware of the need to do so.

With respect to Ta Chen's argument that the Department should not apply facts available to purchased fittings where Ta Chen identified the manufacturer, Ta Chen provides no information regarding how the Department can specifically identify and segregate these sales in the database. Based on citations made by Ta Chen to the verification report, the Department believes that the manufacturer in question is the same firm for which the Department requested clarification in its March 6, 2008, letter at question 2. In its March 14, 2008, response to the Department, Ta Chen noted that the name used in the submitted databases to denote one manufacturer actually represents two separate manufacturers in the same corporate group, and that one of these manufacturers both sells and toll-produces merchandise. Ta Chen's explanation as to how to segregate the various sales involving these manufacturers is incomplete. See Ta Chen's March 14, 2008, letter at 1. As the information regarding the manufacturers in this corporate group and the commercial activities between them and Ta Chen is unclear, the Department cannot determine with certainty whether Ta Chen has identified a single manufacturer for any of its sales of purchased fittings; thus the Department has not changed its treatment in the Preliminary Results of Ta Chen's sales of fittings purchased from other manufacturers.

The Department is not resorting to adverse facts available under § 776(b) of the Act. 776(b) of the Act would require that the Department find that Ta Chen "has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority." Based upon Ta Chen's arguments that it cannot distinguish the manufacturer of fittings once they have entered inventory, a significant portion of Ta Chen's Brief appears to assume that the Department has made such a finding. We have not and are not.

Consequently, both Ta Chen's and Petitioners' arguments on the issue of the application of adverse facts available are moot and will not be addressed.

Therefore, for the reasons cited above, the Department continues to treat toll produced merchandise as being produced by Ta Chen and continues to calculate margins based on the information provided. In addition, the Department also continues to apply facts available to those sales of merchandise produced by other manufacturers not specifically identified by Ta Chen.

Comment 5: Ta Chen's Raw Material Cost

Ta Chen claims that the Department's adjustment to its raw materials costs in the Preliminary Results (accounting for the Department's finding at verification that input coil costs exceeded reported costs for the pipe made from coils) results from the Department's failure to account for production lags. Ta Chen claims that the production lag between the time steel coils enter the pipe production process and the completion of the fittings production process ranges from one month to four months. Therefore, Ta Chen argues that the Department's estimation of fitting production costs for a month using that month's per-unit coil costs is distortive, because the fittings for which production was completed in that month would have been made from coils that entered the production process from one to four months earlier. In its recalculation of the Department's analysis (see the tables on pages 40-42 of Ta Chen's Brief), Ta Chen, instead of using a given month's per-unit coil costs to estimate the coil costs of the fittings for which production was completed in that month, uses the weighted-average inventory coil costs for the four preceding months. For both sample CONNUMs referenced by the Department in its preliminary analysis, Ta Chen's recalculations result in estimated coil costs that are slightly below the overall cost of the pipe, which Ta Chen argues demonstrates the reasonableness of its reported costs. See Ta Chen's Brief at 30-48.

Ta Chen argues that the Department's adjustment to its costs is improper, and that the Department should issue its final results without applying FA to Ta Chen's costs. Ta Chen contends that the Department's FA methodology applied for its adjustment is erroneous and unsupported. Ta Chen stresses that its cost accounting records are kept in accordance with generally accepted accounting principles ("GAAP"), and have been audited by outside auditors. Ta Chen also states that because pipe is used for many purposes other than fittings, the variance between standard and actual cost is allocated not only to fittings but also to many other products. Ta Chen contends that a proper consideration of normal time-lags and resulting cost variances from the record evidence demonstrates that Ta Chen's audited cost accounting system based on weighted-average cost of product at the time used in production is accurate. Ta Chen further attempts to support its argument with the following four arguments: 1) the Department's conclusions ignore key facts on the record; 2) the Department's FA conclusion; 3) Ta Chen's cost accounting; and; 4) Petitioners' June 18, 2008, letter. See Ta Chen's Brief at 32-48.

The Department's Conclusion Ignores Key Record Facts

Ta Chen argues that the Department's FA approach incorrectly ignores two key points: 1) the coil cost used in determining actual material costs is the weighted-average, per-unit actual value of coils in inventory at the time that the coil enters the pipe production process; and, 2) production of fittings takes at least two months from the time that coil enters the pipe production process.

As to the first point, Ta Chen explains that its actual coil costs for production are based on the weighted-average cost of the coils in inventory at the time coils are used for production; therefore, the actual coil cost reported is not the actual weighted-average, per-unit coil cost for the month in which the fitting was produced, but rather, the actual weighted-average, per-unit coil cost for the month in which the coil was taken from inventory and entered production. See Ta Chen's Brief at 32. Secondly, Ta Chen stresses that the production of fittings takes at least two to four months from the time that coil enters the production process from the time it is pulled out of inventory. Ta Chen points to the Ta Chen Verification Report, and its CQR, and cites to Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part 70 FR 67665 (November 8, 2005) ("Turkish Rebar") to support its time-lag claim and explanation. See Ta Chen's Brief at 33-34.

Ta Chen states that the Department's FA methodology inaccurately steps outside of its accounting system to speculate cost based on a set X-month lag when coils would be used in fittings production. This is not an accurate benchmark, Ta Chen insists, because the production lag may vary depending on Ta Chen's production requirements. Thus, Ta Chen states that the actual coil cost used in Ta Chen's cost accounting system for cost reporting purposes may have been derived as far back as four months before the month in which the fitting is produced, as opposed to just one or two months. Moreover, Ta Chen explains that in a market environment of spiking coil prices from one month to the next, as in the case of stainless steel coil during the POR, these production lags are significant in determining the actual raw material cost of a fitting produced from coil that entered the production process months before production of the fitting is completed.

Ta Chen further states that its raw material costs for fittings are buttressed by its accounting system, which accords to Taiwan GAAP, is ISO-certified, and ties to Ta Chen's audited financial statement. Ta Chen maintains its reported costs are consistent throughout Ta Chen's questionnaire responses, its audited financial statements, and the verification report, and have been found reliable in 12 Department annual reviews to date, as well as the original investigation. See Ta Chen's Brief at 32-37.

The Department's FA Conclusion

Ta Chen argues that the Ta Chen verification report and FA conclusion erroneously go outside of Ta Chen's cost accounting system which ties to its audited financial statement, and has been verified by many prior Department cost accountants. Ta Chen states that the Department's conclusion is not supported by the substantial evidence to be in accordance with

law, and fails to cite any evidence supporting its conclusion, other than to demonstrate a discrepancy between coil costs and the material costs for fittings which do not account for any time-lags in the production process. Ta Chen states that at the verification Ta Chen turned the Department's attention to the coil cost reports to show how the average unit value of coil rose dramatically and quickly in 2006, and to demonstrate that the increase in coil costs is not reflected in the variance in the manner assumed by the Department, absent time-lags. Ta Chen further states that at verification the Department did not indicate any concern that TA Chen had underreported its cost.

Ta Chen's Cost Accounting

Ta Chen argues that it submitted complete and accurate costs that by themselves confirm the validity of its production lag. Ta Chen provides two charts derived from exhibits taken during the Department's verification of Ta Chen. See Ta Chen Verification Report at VE-1 and VE-28. According to Ta Chen, these exhibits show that for the month of September for two CONNUMs, the actual weighted-average, per-unit value of all coils in inventory at the time the coil is pulled out of inventory and enters pipe production, accounting for a two to four month time lag which is significantly less than the Department's findings. Ta Chen argues that its approach is reasonable and accurately reflects its actual raw material costs incurred by Ta Chen. Ta Chen states that an exact correlation between pipe production and fittings production is impossible, given the time-lag factor, other costs associated with the coil, and the inclusion of fixed and variable costs in Ta Chen's raw material calculation.

Petitioners' June 18, 2008 letter

Ta Chen rebuts six arguments Petitioners made in their June 18, 2008, letter. First, Ta Chen states that Petitioners' interpretation of any potential lags Ta Chen has between raw material purchases and pipe conversion as only a matter of weeks mischaracterizes Ta Chen's statement that a matter of weeks pass between a fittings mill requisition for pipe and the actual supply of the pipe from the pipe plant. Ta Chen states that the supply of pipe to the fittings plant is only one step in the entire production process, and that the total time it takes for fittings to be produced, from the time coil enters the production process, is between two to four months. See Ta Chen's Brief at 43-44. Second, Ta Chen argues that Petitioners mischaracterize its claim that the lag time from coil to pipe and/or pipe to fittings was many months. Third, Ta Chen asserts that Petitioners' implication that the difference between its weighted-average, per unit actual cost and actual costs of coil in inventory only makes sense if an absolute amount were in question, is incorrect. Ta Chen states its variance allocation starts with an absolute amount proportionally allocated across various production stages. Fourth, Ta Chen argues that Petitioners' allegation that its financial system significantly understated direct material costs so that it did not reasonably reflect the costs associated with the production and sale of subject merchandise relies on an erroneous premise that cannot withstand scrutiny. Ta Chen states that once production lags are appropriately accounted for, allegations of understatement are meritless. Fifth, Ta Chen takes issue with Petitioners' allegation that it failed to completely account for the cost of transportation for tolled fittings. Ta Chen states that it reported all costs

that it incurred, including the subcontractors costs where the subcontractor presumably ensures that it charges Ta Chen sufficiently to make a profit.

Finally, Ta Chen argues that Petitioners' attempt to capitalize on the alleged inaccuracy of Ta Chen's use of 20-foot lengths of pipe as its basis for cost allocations is meritless because Ta Chen uses 20-foot pipes only in its standard cost allocation. Ta Chen states that it uses 20-foot pipe in its ordinary course of business based on its best business judgment and experience as to the average length of pipe used in fittings production. Ta Chen contends that this average is used only for standard cost purposes, as opposed to actual costs. Ta Chen claims that for cost calculation purposes, the cost variances would account for the extent to which pipe lengths diverged from the standard length. See Ta Chen's Brief at 43-47.

In rebuttal, Petitioners assert that the Department's adjustment to Ta Chen's direct material costs of fittings was necessary in order to account for the discrepancy in Ta Chen's reported raw material costs, and is supported by facts examined at verification. Petitioners argue Ta Chen's claim that the Department's finding on pipe input costs ignores the distinction between its recorded average cost of coils in inventory in a given month and the time needed for that cost to be reflected in the average cost of coil as pipe incorporated into fittings. Petitioners state that the Department correctly disregarded the unproven lag times in its Preliminary Results, and it should again reject Ta Chen's assertions regarding how or when one or more coils might or might not have been used for which product lines. See Petitioners' Rebuttal Brief at 22 and 27.

Petitioners contend that as noted in the Ta Chen Verification Report, the Department correctly found significant under-reporting by Ta Chen of its raw material pipe costs for making (and also tolling) subject merchandise and the foreign like product. Petitioners point to Ta Chen's reported pipe costs in a sample month, November 2006, for sample grade 304L and 316L fittings as an example of product costs that were reported as significantly less than a conservative estimate of the cost of the major input (coils) needed to produce the pipe in question. Petitioners allege that this finding undermines the basic accuracy of Ta Chen's DQR. Petitioners provide an analysis of the potential difference between Ta Chen's reported costs and the Department's conservative estimates of actual costs. See Petitioners' Rebuttal Brief at 24-27. Petitioners argue that Ta Chen's argument that there is a lag time between when coils are valued for inventory and when coils are valued in the records for producing fittings is without support and substantiation. See Petitioners' Rebuttal Brief at 27-28.

Petitioners reject Ta Chen's claims that the Department should review the inventory carrying period for pipe as it is drawn out to make fittings, and rely on Turkish Rebar, where the Department permitted a cost difference due to a lag between the raw material (billet) and finished product (rebar). Petitioners argue that the facts present in Turkish Rebar are distinguished from the instant case as the lag period pertained to the time between the production of the primary round product input, a billet, and the finished round product, rebar. However, Petitioners argue that in this case the Department is not concerned about the period between the production of coils, the primary input, and the production of fittings, but only about

the value used for the requisition of coils at the pipe production sub-stage. See Petitioners' Rebuttal Brief at 27. Petitioners continue that Ta Chen's time-lag rationalization not only invents a wide range of lag times without evidence of the accuracy of such a lag, and without evidence that such a lag was employed in valuing coil for fittings production, but also exaggerates the impact any lag could have on total production costs.

Petitioners state that Ta Chen provides no bridging calculations, explanations, or documentation to demonstrate how the much larger coil-to-pipe material cost variances as recorded at the pipe mill became the percent variance recorded as coil-to-pipe material costs for producing fittings from pipe, as reflected in Ta Chen Taiwan Verification Report at VE-19. In addition, Petitioners contend that Ta Chen has provided no objective and documented basis to conclude that production lags account for the material difference between the average inventory values and the valuation applied to report fitting material costs. See Petitioners' Rebuttal Brief at 28-30.

Petitioners claim that Ta Chen is asking the Department to accept that Ta Chen's accounting system values coils for fittings by using an average value of coil at the time coil was pulled out of inventory either one, two, or four months prior to the time the fittings were produced from the pipe that was made from the aforementioned coils without any documented evidence. Petitioners note that Ta Chen's claim that its cost methodology was verified by many prior Department cost verifications is made without a single reference to any verification report, or any Federal Register notice or decision memorandum. See Petitioners' Rebuttal Brief at 27.

Petitioners assert that the Department should reject in the final results the calculation of alternative costs proposed by Ta Chen in its briefs because it is based on purely hypothetical and unrealistic lag times. See Petitioners' Rebuttal Brief at 28-33. Petitioners contend that the Department should again reject the theoretical recalculations presented. Petitioners point out that the Department's observations at verification, the pipe mill material's variance information provided by the company, and ratios of standard costs of each of those to the total standard costs, all resulted in extremely understated allocations of such material variances as coil to pipe costs when such costs were attributed to the production of subject merchandise.

Petitioners state that Ta Chen tries to tie the cost of coil to fittings by making the claim, without any reference to the record, that the coil cost is recorded in Ta Chen's accounting system in the month in which fitting production was completed, which contradicts its prior claim that the coil cost used is the actual weighted-average, per-unit coil cost at the time coil enters pipe production. Petitioners argue that Ta Chen is trying to blur the distinction, with a difference, between the costs at the pipe mill and that at the fittings mill. According to Petitioners, the proper recording of costs at the pipe mill is a prerequisite to the proper recording of costs at the fittings mill. Petitioners surmise that the distorted values at the first stage of production from coil to pipe are material to the Department's analysis because if the value of the coil is misstated for pipe valuation, that undervaluation will carry through when the (mis)valued pipe cost is applied to the next stage of production.

Petitioners state that none of Ta Chen's hypothetical scenarios negates the finding that Ta Chen's financial accounting system underreported direct material costs for subject merchandise. In addition, Petitioners allege that Ta Chen tries to make its artificially low coil costs appear reasonable by grossly expanding the timeframe in question, as if a theoretical lag in production scheduling for fittings production would explain the difference in coil costs as actually purchased and as recorded as removed for pipe production.

In addition to the issue of time-lags, Petitioners protest criticisms made by Ta Chen about several arguments Petitioners made throughout the review. See Petitioners' Rebuttal Brief at 30-33. First, Petitioners argue that although Ta Chen alleges that Petitioners were wrong to claim that Ta Chen had failed to substantiate lag times, pointing to its verification report, it is actually Ta Chen that failed to explain or document the cause of the very significant coil cost discrepancy. Petitioners insist that Ta Chen failed to show if and or how any lag time was actually employed by the company's system in changing the average inventory coil value into the reported fitting coil cost. See Petitioners' Rebuttal Brief at 30.

Second, Petitioners note that Ta Chen's claim that fitting production would add one to three additional months of time is unsubstantiated. Specifically, Petitioners reiterate their prior criticism that the only pertinent lag is the statement by Ta Chen regarding a matter of weeks between the time pipe is withdrawn from inventory to make fittings. See Petitioners' Rebuttal Brief at 31. Petitioners argue that Ta Chen's belated expansion of a possible production lag of weeks to one of several months is not only hypothetical, but specious because, Petitioners insist, even with a mill far more inefficient than Ta Chen's it should not take months to transform a pipe into a fitting. Id.

Third, Petitioners assert their comments questioning Ta Chen's claim that only a small part of the variance on coil costs should be attributed to fittings, because only a small portion of coil purchases is eventually used to make fittings, is a valid concern. See Petitioners' Rebuttal Brief at 31, citing their June 17, 2008, letter (Comments on Verification) at 12-13. Petitioners stress that Ta Chen unjustifiably wants the small proportion of fittings production to diminish the application of the actual pipe mill coil cost variance. Petitioners argue that the small proportion of fittings production cannot simultaneously be both the major driver of a theoretical lag in coil-to-pipe production cost reconciliation and a minor driver of cost allocations among products for the same coil-to-pipe production costs. See Petitioners' Rebuttal Brief at 31. Petitioners also note that although Ta Chen claims that what matters for reporting its costs is when toll producers charged it for transportation of materials, it ignores the larger question of why those toll producers sometimes agreed to transport raw materials without charge, sometimes with charge, and why at other times Ta Chen transported the materials itself. See Petitioners' Rebuttal Brief at 32.

Petitioners state that Ta Chen seeks to counter Petitioners' comments regarding the manner in which actual pipe lengths diverged from the 20-foot length used in its calculations, with Ta Chen claiming that since the 20-foot measure was used in its standard cost allocations, it should not matter if some actual pipe lengths were slightly below 20 feet while others were

exactly 20-feet. However, Petitioners note that at least one product is significantly shorter than 20 feet in length. See Petitioners' Rebuttal Brief at 32.

In conclusion, Petitioners stress that it is critical for the Department to require and obtain complete and accurate reporting of direct material costs on a CONNUM-specific basis in order to calculate normal value accurately. Petitioners contend that Ta Chen's decision not to maintain sufficiently accurate data as required by the Department should not work to its benefit by diluting the accuracy of the margin calculation. Petitioners suggest that applying, at minimum, partial adverse facts available on direct material costs is warranted in light of the company's failure to report necessary information in the form and manner requested. See Petitioners' Rebuttal Brief at 32.

Department's Position:

Pursuant to § 776(a)(2)(D) of the Act, the Department finds that the use of FA is appropriate with regard to Ta Chen's reported costs of production. The Department preliminarily found that Ta Chen significantly under-reported the direct material costs used in the cost of production of the subject merchandise. See Preliminary Results, 73 FR at 38976-77.

Ta Chen has not provided a plausible or verifiable explanation for why its reported direct material (pipe) costs for the two sample fittings products analyzed by the Department (as described in the Ta Chen Verification Report) are significantly less than a reasonable estimate of the cost of the input coils used to produce the pipe. The pipe costs should exceed the cost of input coils, because of the costs associated with converting coils into pipe, the yield loss associated with converting coil into pipe, and the yield loss associated with converting pipe into fittings. Therefore, an adjustment to Ta Chen's raw materials costs is appropriate.

The Department continues to find that it is appropriate to recalculate Ta Chen's costs for products it manufactured (either by itself or through hired subcontractors). In the Preliminary Results, the Department cited to the significant amount by which estimated minimum coil costs for sample products reviewed during verification or provided in Ta Chen's responses exceeded even the reported pipe input costs (even before accounting for coil yield losses, costs of converting coil into pipe, or yield losses in the fittings production process). See Ta Chen Verification Report at 72 and the Preliminary Sales Analysis Memo at 3-6 and Attachments 2-3.

Section 776(a)(2) of the Act, provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that the Department must inform the interested party of the nature of any deficiency in its response and, to the extent practicable, allow the interested party to remedy or explain such deficiency. We preliminary found that, pursuant to § 776(a)(2)(D) of the Act, the application of FA was

warranted for the calculation of Ta Chen's costs of production because Ta Chen provided information that could not be fully verified. See Preliminary Results, 73 FR at 38977. As discussed below, consistent with § 782(d) of the Act, we provided Ta Chen an opportunity to explain the discrepancy between reported pipe costs and coil input costs both at verification and in its post-verification submission.

Ta Chen claims that it was not given an opportunity to explain the discrepancy between reported pipe costs and coil input costs. This is incorrect. At verification, the Department asked Ta Chen to explain the discrepancy between the large increases in coil acquisition costs and the coil variances:

> We asked about rising coil prices, and the company acknowledged that coil costs had risen during the POR, and indicated that rising nickel prices had been a major factor in this respect. We asked why pipe mill material (coil) variances would be significantly smaller than the increases in coil acquisition costs. Before the company answered, we conjectured that lags between coil purchases and coil (and resulting pipe) used in the production process might explain the seemingly limited impact of the surge in coil acquisition prices upon the magnitude of the resulting variances at the pipe mill material (coil) level and at the overall fittings level.

See Ta Chen Verification Report at 72-73. In response, "{t}he company indicated that our conjecture might provide a partial explanation, but emphasized that the pipes transferred to the fittings mill represent only a small portion of the pipes produced." Id. at 73. However, as also noted in the Ta Chen Verification Report, the variances appear to have been allocated proportionately across all pipes. Id. at footnote 36. Therefore, the extent to which pipes were used for production of fittings would not explain the magnitude of the pipe mill variances, or why they would be significantly smaller than the increases in coil acquisition costs.

Ta Chen also added that "the coil in/out report would show how coil costs had risen." Id. at 73. It is that very information (the coil in/out reports, which identify the monthly inventory value of coils) which the Department used in the analysis presented in the verification report and its Preliminary Results, and significant discrepancies still exist for many months even accounting for the monthly coil costs based on the coil inventory values recorded in the coil in/out reports. See Memorandum to the File to Richard Weible, Director, Office 7, entitled "Analysis of the Duration of the Fittings Production Process for the Final Results of the 2006-2007 Administrative Review of the Antidumping Duty Order on Stainless Steel Butt-Weld Pipe Fittings from Taiwan; Ta Chen Stainless Pipe Co., Ltd. (Ta Chen)," dated January 5, 2009 ("Ta Chen Final Cost Memorandum"). In its case brief, Ta Chen argues that analysis of monthly inventory coil value data, in conjunction with the assumption that the entire production process typically takes two or more months, confirms the reasonableness of Ta Chen's reported raw material (pipe) costs. However, as discussed below, the record does not support Ta Chen's underlying premise, i.e., the length of the production process.

Contrary to its assertions, Ta Chen did not provide at verification evidence of significant

lags during the production of pipe from coil, during the production of fittings from pipes, or the intervening inventory periods for pipe at the pipe and fittings mills.[15] If there had been significant lags between the beginning of pipe production and completion of fittings production amounting to as long as four months, Ta Chen could have mentioned them at verification, when the Department still had an opportunity to make additional inquiries regarding the accuracy of such claims. In addition, before concluding the verification, the Department gave Ta Chen an opportunity to make additional statements about topics discussed during the verification, and Ta Chen did not make any additional statements. See Ta Chen Verification Report at 75.

Ta Chen made its assertions regarding a two to four month lag between the beginning of pipe production and the completion of fittings production in its June 18, 2008, submission after the issuance of the Ta Chen Verification Report. However, those assertions not only are not supported by data on the record (or even by statements by Ta Chen at verification), but they also are contradicted by information on the record. Analysis of data on the record, as discussed in the Ta Chen Final Cost Memorandum, suggests that on average the entire process takes less than a month.

As noted, Ta Chen claims that the Department's adjustment to costs in the Preliminary Results, which estimated pipe costs by combining monthly coil purchase costs with Ta Chen's own estimates of pipe conversion costs and yield losses, fails to account for lags between the time coil enters the pipe production process and the time production of fittings from the pipe produced from the coil is completed. Ta Chen cites Turkish Rebar to state that production lags may affect raw material costs recorded for the production of finished products. We agree with Ta Chen that the price of coils consumed from inventory might be valued at less than the current cost of purchasing them. See Turkish Rebar. Accordingly the Department has adjusted its recalculation of pipe costs, as discussed below. However, adjusting for lags between coil purchases and the use of coils in the production process does not account for the large discrepancies in costs reported by Ta Chen. In fact, the analysis provided in the Ta Chen Verification Report for the sample month did not use the coil purchase costs for that month but, rather, the coil inventory values for that month.

For its Preliminary Results, the Department based its estimates of per kilogram monthly coil costs on Ta Chen's monthly purchased coil costs, which were available for all months of the POR. For the final results, the Department has instead based per kilogram monthly coil costs on Ta Chen's own monthly inventory coil cost data for the seven months of the period of review for which such information is available on the record. The inventory coil cost data are based upon the actual weighted-average, per-unit coil cost for the month in which the coil was taken from inventory and entered pipe production, so use of these data in the Department's recalculations avoids distortions that might result from the fact that purchased coils may remain

[15] Ta Chen alludes to statements it made at verification, reported in the verification report pertaining to possible lags dating from orders by customers for fittings or from requisitions by Ta Chen's fittings mill for pipes. See Ta Chen Case Brief at 33-35. However, the relevant analysis for Ta Chen's claim regarding a two to fourth month fitting production process involves lags dating from the onset of pipe production from coils.

in inventory for a few months prior to use for pipe production. For the remaining five months of the period of review for which Ta Chen's inventory coil cost data are not available (i.e., January 2007, through May 2007), the Department is using a simple average of coil purchase data from the prior three months to estimate the coil inventory costs for a given month. Based upon our review of record information, we have ascertained that coils, on average, appear to be in inventory for less than three months. See Ta Chen Final Cost Memorandum.

Finally, we have not made adjustments to Ta Chen's reported costs for unreported freight costs, or for alleged discrepancies arising from variation in pipe lengths from Ta Chen's claimed 20 foot length standards. Petitioners have not demonstrated that Ta Chen incurred any unreported freight costs. Furthermore, the record does not establish that variation in pipe length from standard sizes resulted in either over-reporting or under-reporting of product costs. See Ta Chen Final Cost Memorandum.

Regarding Ta Chen's reliance on past auditing and Department verifications, such actions, to the extent they occurred, do not establish that Ta Chen's reported direct material costs for fittings are reasonable. Although the reported costs in total may have been in accordance with Taiwanese GAAP this does not establish that the product specific reported costs for purposes of the margin calculation were reasonable as required by § 773(f)(1)(A) of the Act. Ta Chen's auditors did not offer an opinion regarding the reasonableness of the reported product specific costs in their audit report accompanying the financial statements and therefore the auditors' report cannot be relied upon to support the reasonableness of the reported product specific costs. Ta Chen provided no evidence from the record that its cost system was unchanged over the past 12 years and, even if it had, that would not demonstrate that information generated from such a system cannot be inaccurate or distortive for purposes of reporting the product-specific costs to produce subject merchandise. Ta Chen provided no evidence from the record that the Department had encountered the same fact patterns in prior segments or verifications as exist in this administrative review (e.g., steadily increasing coil input costs). Even if it had done so, that would not explain the substantial discrepancies between input coil costs and reported pipe costs.

In short, for the sample month analyzed at verification, covering two sample fittings products, Ta Chen's reported direct material costs for fittings are significantly less than its coil usage data would indicate they should be and, after accounting for yield losses and costs of converting coil into pipe, the differences are very substantial. Ta Chen has not provided a credible explanation for such discrepancies, so continued use of facts available is appropriate. The Department based its recalculation of direct materials costs for subject merchandise upon Ta Chen's own information, made various conservative assumptions (i.e., regarding the types of coils used to produce pipe used for fittings; and the amount of yield loss; see Ta Chen Final Cost Memorandum), because there is no basis for application of adverse facts available.

Comment 6: Calculation of CEP Profit Ratio

Ta Chen requests that its imputed costs (inventory carrying costs and credit costs) be

considered when calculating the CEP profit ratio. Ta Chen states that its average imputed inventory carrying cost alone accounts for a substantial percent of its cost of manufacture, given the average inventory time (citing its CQR at C-47 and Exhibit C-5). Ta Chen states that such costs need to be accounted for in the CEP profit rate calculation, but that they are not accounted for by actual interest costs. In addition, Ta Chen insists that since only a certain percent of Ta Chen's total assets are accounts receivable or finished goods inventory, that is the extent of any imputed credit and inventory carrying costs reflected in actual interest costs. Ta Chen argues that to avoid any claim of double counting, after considering imputed costs in the CEP profit ratio calculation (numerator and denominator), one could reduce the actual interest costs by the ratio of actual interest cost multiplied by the percentage of actual interest costs to cost of manufacturing ("COM"). See Ta Chen's Brief at 51-52.

Petitioners assert that the Department should continue to calculate Ta Chen's CEP profit as in the Preliminarily Results. Petitioners ask the Department to reject Ta Chen's argument to reduce the amount of profit on its CEP sales to the U.S. market and, thereby, reduce the downward adjustment to U.S. price for CEP profit allocated under 19 U.S.C. § 1677a(d)(3). Petitioners state that complying with Ta Chen's request would decrease Ta Chen's CEP profit to U.S. price and understate Ta Chen's dumping margins for the subject merchandise.

In arriving at its current regulations on the CEP profit at 19 C.F.R. § 351.402(d), Petitioners note that the Department addressed a suggestion from a commenter (similar to those put forth by Ta Chen) that the Department ". . . should deduct all expenses, including imputed expenses, in calculating the CEP profit deduction." See Antidumping Duties; Countervailing Duties, General Rule, 62 FR 27296, 27354 (May 19, 1997). However, Petitioners explain that the Department rejected this methodology, stating that ". . . the Department does not take imputed expenses into account in calculating cost. Moreover, normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit." Id. Thus, in determining total profit, Petitioners state that the Department only considers actual booked expenses, not imputed expenses.

Petitioners argue that Ta Chen has not provided any support, evidence or reason for the Department to divert from its consistent policy and practice to only consider actual booked expenses, not imputed expenses as argued by Ta Chen, as it did in the Preliminary Results and in Ta Chen's past administrative reviews in this proceeding. Petitioners point to 19 C.F.R. § 351.402(d), the Department's Policy Bulletin on CEP Profit,[16] and past determination where the CIT upheld the Department's decision to calculate Ta Chen's CEP profit in a manner consistent with the methodology used by the Department in its Preliminary Results. See Petitioners' Rebuttal Brief at 35-37 (citing Ta Chen Stainless Steel Pipe, Ltd. v. United States, 427 F. Supp. 2d 1265 (CIT 2006) ("Ta Chen 2006")).

Department's Position:

[16] Policy Bulletin No. 97/1: Calculation of Profit for Constructed Export Price Transactions, dated September 4, 1997 ("Policy Bulletin on CEP Profit").

For purposes of these final results, the Department has determined to continue to calculate CEP profit based on actual expenses per the statute (19 U.S.C. § 1677a(d)(1), (2) and our regulations (19 C.F.R. § 351.402(d), and as articulated in the Department's Policy Bulletin on CEP Profit.

The Department is required in its determination of constructed export price to identify and deduct from the starting price in the United States market an amount for profit allocable to selling, distribution, and further manufacturing activities in the United States. Specifically, the statute identifies "the profit allocated to the expenses described in paragraphs (1) and (2)." See 19 U.S.C. § 1677a(d)(3). "Paragraphs (1) and (2)" refer to (1) direct and indirect selling expenses; and (2) the cost of any further manufacture or assembly. See 19 U.S.C. § 1677a(d)(1), (2). The statute also contains a special rule for determining profit, which provides as follows:

> (f) Special rule for determining profit
>
> (1) In general
>
> For purposes of subsection (d)(3) of this section, profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.
>
> (2) Definitions
>
> For purposes of this subsection:
>
> (A) Applicable percentage
>
> The term "applicable percentage" means the percentage determined by dividing the total United States expenses by the total expenses.
>
> (B) Total United States expenses
>
> The term "total United States expenses" means the total expenses described in subsection (d)(1) and (2) of this section.
>
> (C) Total expenses
>
> The term "total expenses" means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

(i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.

(iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

(D) Total actual profit

The term "total actual profit" means the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph.

See 19 U.S.C. § 1677a(f).

The SAA states that "the total profit is calculated on the same basis as the total expenses." H.R. Doc. No. 103-316, vol. 1, at 825, reprinted in 1994 U.S.C.C.A.N. 3773, 4164. Moreover, "no distortion in the profit allocable to U.S. sales is created if total profit is determined on the basis of a broader product-line than the subject merchandise, because the total expenses are also determined on the basis of the same expanded product line. Thus, the larger profit pool is multiplied by a commensurately smaller percentage." Id. By regulation, the Department has determined that "in calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production." See 19 C.F.R. § 351.402(d)(1).

The Department considers imputed selling expenses (such as imputed credit and inventory carrying costs) to be types of selling expenses encompassed by 19 U.S.C. § 1677a(d)(1) and 19 U.S.C. § 1677a(d)(2). See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2127 (January 15, 1997) ("Antifriction Bearings"); see also Silver Reed America, Inc. v. United States, 679 F. Supp. 12 (CIT), reh'g granted, 683 F. Supp. 1393 (CIT 1988) (sustaining the Department's authority under pre-URAA law to deduct imputed selling expenses from exporters sales price).[17] For this reason, in determining "total United States expenses," the

[17] The URAA amendments did not require a change in the Department's practice with regard to its treatment of imputed selling expenses as types of selling expenses that are properly deducted from the starting price

Department includes imputed selling expenses because the statute defines "total United States expenses" as equaling the selling expenses described in 19 U.S.C. § 1677a(d)(1) and 19 U.S.C. § 1677a(d)(2).

In its determination of "total actual profit," however, the Department does not include imputed selling expenses because "'normal accounting principles permit the deduction of only actual booked expenses, not imputed expenses, in calculating profit.'" See Antidumping Duties; Countervailing Duties, Final Rule, at 27354. The Department has also explained that its calculation of profit already includes net interest expenses and that, as a result, there is no need to include imputed interest expenses in determining total profit. See Antifriction Bearings; Policy Bulletin on CEP Profit at footnote 5. The Department's decision to use only actual expenses, not imputed expenses, in determining profit is buttressed by the statute itself, which specifically refers to "total actual profit." See 19 U.S.C. § 1677a(f)(2)(D).

In its determination of "total expenses," the Department also does not include imputed selling expenses. As is evident from the statute itself, the Department's determination of "total actual profit" is based upon its determination of total actual expenses. That is, the Department determines profit "with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph" (i.e., the subparagraph which defines "total expenses"). 19 U.S.C. § 1677a(f). The SAA echoes the statute, noting that "total actual profit" is to be calculated "on the same basis" as total expenses. See SAA at 825, reprinted in 1994 U.S.C.C.A.N. at 4164. The link between "total actual profit" and "total actual expenses" ensures that, regardless of the product line used to determine profit, a *pro-rata* amount of profit will be allocated to selling, distribution, and further manufacturing activities in the United States because, as indicated by the SAA, higher profit amounts that result from the use of broader product lines result in a proportionately smaller amount of allocated profit. Id. As with "total actual profit," the Department does not include imputed selling expenses in its calculation of total expenses so as to avoid double-counting. See Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review, 62 FR 18476, 18479 (April 15, 1997) ("Although the actual and imputed amounts may differ, if we were to account for imputed expenses in the denominator of the constructed export price allocation ratio, we would double count the interest expense incurred for credit and inventory carrying costs because these expenses are already included in the denominator.").

The CIT has also held that imputed expenses do not need to be limited to, or less than, the total amount of recognized net financial expenses included in the "total expenses" denominator because the imputed expenses in the numerator are gross expenses, while the recognized financial expenses in the denominator are net of interest income, which itself may not be allocable to U.S. selling activities. See Ta Chen 2006, 427 F. Supp. 2d 1277. Furthermore, in Alloy Piping Products, Inc. v. United States, 28 CIT 1805 (2004) ("Alloy Piping 2004"), the Court rejected Ta Chen's argument that there was an "enormous" discrepancy between imputed expenses, which "total 17.3 percent whereas actual interest costs are 1.37 percent." Alloy Piping

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used to establish constructed export price.

2004, 28 CIT at 1811. The Court held that it "cannot find…that the 'imputed expenses represent some real, previously unaccounted for expenses' because the actual interest cost, 1.37 percent, is allocated to selling expenses, which are included in the figure for 'total expenses.'" Id. The Court also held "{T}hat imputed expenses are greater than actual expenses does not necessarily engender an actionable distortion." Id. Thus, even with a twelve-fold difference between the imputed and actual expenses, the Court in Alloy Piping 2004 found there to be no distortion. Similarly here, the Department does not determine that the differences in imputed costs and actual expenses reported by Ta Chen distort the calculation of CEP profit.

Ta Chen's claim that the Department could avoid double-counting by reducing the actual interest costs by the alleged percentage of Ta Chen's total assets related to accounts receivable or finished goods inventory (see Ta Chen's Brief at 52) is without merit. First, were the Department to include imputed expenses in the denominator (i.e., total expenses), as suggested by Ta Chen, then the Department would be double-counting for such expenses because the total expenses figure (discussed above) already accounts for these amounts. Second, notwithstanding Ta Chen's suggestion that we add imputed expenses to our calculation of total U.S. selling expenses (i.e., the numerator of the CEP profit ratio calculation) is contrary to our practice and statutory guidance (discussed above), reducing the actual interest costs as suggested by Ta Chen is not more accurate. Credit costs are a function of a company's actual short-term borrowing rate (or interest rate) and the amount of time the customer takes to remit payment for sales. Therefore, a company that extends long payment terms to its customer would thereby incur more imputed credit expenses. Imputed inventory carrying costs are based upon a company's actual short-term borrowing rate, the average time merchandise remains in inventory, and, in most cases, the total cost of manufacture for each product. Hence, the longer merchandise with a high cost of production remains in inventory, then the greater its opportunity cost, i.e., imputed inventory carrying costs. Thus, the imputed expenses may reasonably exceed the amount of recognized financial expenses in the denominator (total expense calculation used to derive the CEP profit ratio) without the existence of a distortion. Although the CIT in Ta Chen 2006 did recognize that the imputed expenses in the numerator are gross expenses, while the recognized financial expenses are net of interest income, the Court also recognized in principle that the imputed expenses are an approximate amount, and that "there is no apparent reason why all such costs – whatever their magnitude – would not be fully and accurately reflected in Ta Chen's consolidated financial statements." Ta Chen 2006, 427 F. Supp. 2d at 1272, n.13. Thus, in this case, in light of Ta Chen 2006, the Department finds that we reasonably applied our standard methodology.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and changes to the dumping calculation. If these recommendations are accepted, we will publish the final results of the review and the final weighted-average dumping margin for Ta Chen in the Federal Register.

AGREE _____ DISAGREE _____

_____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____
Date